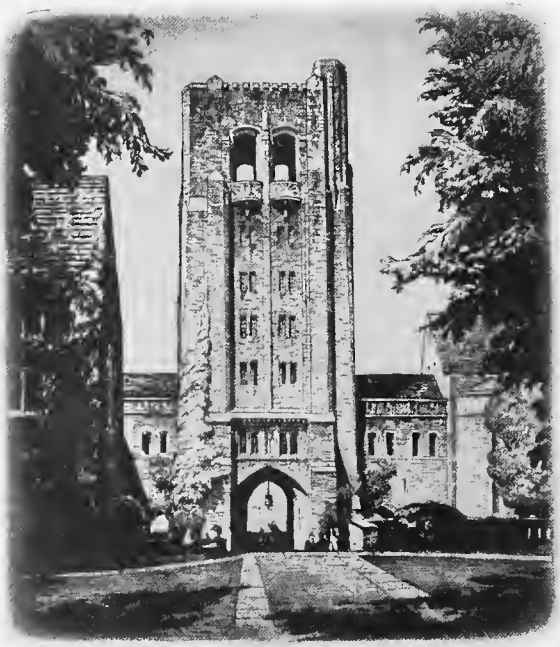

A MANUAL

UPON THE

SEARCHING OF RECORDS

AND THE PREPARATION OF

ABSTRACTS OF TITLE

TO

REAL PROPERTY

ILLUSTRATED BY

REFERENCES TO THE STATUTES OF ALABAMA, COLORADO GEORGIA, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, MICHIGAN, MINNESOTA, NEBRASKA NEW YORK, OHIO, PENNSYLVANIA TENNESSEE, AND WISCONSIN

By MASKELL E. CURWEN

Revised, Enlarged, and Edited, with Forms and References to Decisions

By W. H. WHITTAKER

CINCINNATI
ROBERT CLARKE & CO
1883

Entered according to Act of Congress, in the year 1865,
BY ROBERT CLARKE & CO.,
In the Clerk's office of the District Court of the United States for the Southern District of Ohio.

CONTENTS.

PREFACE TO THE NEW EDITION.

Since the first edition of this work was published, a number of changes have taken place in the statutory laws of the various states which rendered a revision necessary to make it of more practical value. The text of the author has not been otherwise materially altered; and, with the exception of references to later decisions indicated in the foot-notes, and the addition of the laws of several states, the original work of Mr. Curwen remains the same. W.

INTRODUCTORY.

In every contract for the sale of real property, it is implied that the seller will, before the time fixed for the completion of the contract, produce to the buyer satisfactory evidence of his ability to make a marketable title to the land sold. The purchaser, therefore, is not bound to accept a deed, nor to pay the purchase money, nor is he chargeable with interest on the purchase money, until after this reasonable requirement has been complied with. The impatience of buyers, and their unwillingness to trust to the investigations of the seller's counsel, often induce them voluntarily to incur the expense of making the necessary searches; but they are not bound to do so. The owner of land contemplating a sale, seldom thinks it economical to have the title examined and an abstract of title made beforehand, and, in consequence, the completion of sales is frequently delayed, interest on purchase money lost, and expensive litigation incurred by the parties to enforce or resist a specific performance of the agreement.[1]

[1] 1 Chitty's Gen. Prac. 299; 1 Sugden V., pp. 24, 456 n., 510 n. [In England, "the seller's solicitor prepares the abstract at his expense, and the purchaser's solicitor examines the abstract, with the deeds, at the purchaser's expense." 2 Sugden V., p. 2.]

The law of real property admits of such a variety and complication of interests in land, and guards the transfer of them with such strictness, as to make an investigation of the title, on a purchase, or mortgage, or lease, indispensable to the security of the purchaser, or mortgagee, or lessee. The title is made up of a series of documents, required to be executed with the solemnities prescribed by law, and of facts, not usually in the United States evidenced by documents, which show that the claimant is the person to whom the law gives the estate, as the heir, or tenant in dower, and the like. A methodical statement of the contents of these documents, and facts, and of the evidence in support of them, constitute An Abstract of Title. The purpose of this work is to state how that abstract should be made, to notice the usual questions of law and doctrines of equity that arise in examining titles, and to refer briefly to the common sources of information for the fuller elucidation of the law. To attempt to expound the law of real property would not only be beyond our limits, but would be inconsistent with the design of making this a manual for actual practice. It is desired to suggest, within limits which admit of the book being put into the pocket, the points to which the attention of counsel should be drawn, in examining a title, and to refer to larger works

for the learning necessary to enable counsel to give an opinion upon the title after the Abstract has been completed. The author is not aware of any American work upon this subject, and there is unfortunately no treatise which gives an historical review of American legislation on the law of Real Property. It is altogether beyond the scope of this work to attempt it. The law of the several states is therefore stated as it now is, and not as it has been; and no attempt has been made, in stating propositions which involve the common learning of the profession, to do more than incidentally refer to the usual books on these subjects.

The client almost always desires to know, when applying to have a title examined, if he has made a binding contract. The title depending as well on facts external to records as upon the records themselves, external inquiries may disclose such defects as to make it unnecessary to search the records. The price of land is so commonly fixed by the estimated quantity, that clients frequently desire to be assured of the correctness of the computation. These subjects have therefore been first considered.

During the progress of the negotiation for the purchase of lands, the intended buyer sometimes ascertains that a prior contract of sale exists, which is open and unrescinded. He can not, after this

discovery, honestly or safely purchase the lands. The courts of equity treat a valid contract of sale of land as against the parties to the contract, and all persons who claim under them with notice of the contract, as a transfer of the equitable title to the buyer, for whose benefit the second purchaser, with notice, holds any title he may acquire. But a purchaser who, before receiving notice of the prior contract, has paid the purchase money, and received a deed conveying to him the legal title, is as innocent as the first purchaser, and has been more diligent than he was in perfecting his title; and such second purchaser is therefore preferred to the first purchaser. Notice of the existence of a prior contract, though it is a mere verbal one, and therefore apparently not legally binding (section 4), takes away from the second buyer the character of an innocent purchaser, without notice, since even a verbal contract of sale may be enforced against the seller, if he admits its existence.

CHAPTER I.

OF THE CONTRACT OF SALE OF LAND.

1. The contract must be in writing.—2. Contracts made by agents.—3. Sales of land by auction.—4. The written contract excludes verbal evidence.—5. The kind of title required.—6. The effect of the contract.—7. Putting the purchaser into possession.—8. Failure of title before conveyance.—9. The equitable doctrine of part performance.—10. The effect of fraudulent representations.—11. Mistakes in the written contract corrected —12. Refusal of wife to join in the deed.—13. Effect of death of either party.—14. Proposed purchase by married woman.

SECTION 1. By the provisions of the statute for the prevention of frauds and perjuries, enacted in England in 1677, and re-enacted in nearly all of the United States,[1] no contract for the sale of land, or any interest in, out of, or concerning land, can be enforced, unless some note or memorandum thereof be made in writing, and signed by the party to be charged. The writing must contain within itself,

[1] [Ala. Code, sec. 2121; Col. Gen. Laws, 1877, p. 447, sec. 8; Ga. Code, 1873, sec. 1950; Ill. Rev. Stat. 1877, p. 521, sec. 2; Ind. Rev. Stat. 1881, sec. 4904; Ia. Rev. Stat. 1880, sec. 3664; Kans. Comp. L. 1881, p. 464, sec. 6; Ky. Gen. Stat. 1881, p. 248, sec. 1; Mich. Comp. L. 1871, p. 1455, sec. 8; Minn. Stat., 1878, p. 543, sec. 12; N. Y. Rev. Stat. 1882, vol. 3, p. 2326, secs. 8, 9; Neb. Comp. Stat. p. 286, sec. 5; Ohio Rev. Stat. 1880, sec. 4199; Pa. Brightly's Purd. 1873, p. 724, sec. 1; Tenn. Stat. 1871, sec. 1758; Wis. Rev. Stat. 1878, sec. 2304.]

without resort to any external evidence, the whole agreement, including the names of the contracting parties, the price to be paid, all the stipulations intended to bind the parties, and such a description of the land as will enable any one acquainted with it, to learn, upon reading the contract, what property was intended to be sold. Expressions descriptive of the property, if intelligible to those who know it, are sufficient; such as "my farm," "the house in which I live," etc.; and evidence, external to the writing, is admissible for the purpose of showing what land answers that description. Reference may also be had to any other writing, if the contract plainly and unmistakably refers to it, for the purpose of showing any of the terms of the agreement; as, where reference is made to a prior deed for the description of the land, or the contract of sale was made by letter and answer. All writings, so connected by their own internal evidence, constitute one document in law; but no evidence, external to the papers, is admissible to show a connection between papers not thus united: for example, the advertisement of a sale by auction can not be read to show the terms of sale, unless the sale book refers to it as a part of the contract. The contract may be written either in ink or pencil, but must be written on paper, vellum, or parchment. If it is silent as to the time of payment, or of the delivery of the deed, it is implied that the payment and delivery are to be contemporaneous acts, and are to be done in a reasonable time, which is to be determined upon a consideration of all the circumstances of the

transaction. The writing must be signed by the party to be charged; and is valid, though not signed by the party insisting on the performance of it. A writing, in which the party to be charged has signed his name in the third person, in the body of the instrument, instead of signing it at the bottom, or which is signed by initials, the name appearing elsewhere on the paper, is sufficiently "signed," if it is manifest, on reading the paper, that it was intended to be left in that state, and thus treated as a completed instrument.[1]

SEC. 2. Authority may be given to an agent to enter into a contract for the purchase or sale of land by any writing, or by word of mouth, except in Pennsylvania, where the authority must be by writing; and may be revoked, at any time before a binding contract has been signed by the agent, notwithstanding any verbal agreement into which he may have entered for a purchase or sale of the land.[2] If it distinctly appears upon the paper who the principal is, and that it is his contract, the form in which the agent signs the contract is not material; but, ordinarily, it is prudent to conform to the regular method, and exclude the agent's name from

[1] Greenleaf Ev., secs. 262–271; [1 Sugden on V. 214; Smith on Contracts, 8th Am. ed., 84–89;] Boydell *v.* Drummond, 11 East. 142; Sivewright *v.* Archbald, 6 Eng. Law and Eq. R. 286.

[2] [1 Sugden V. 217; Story Agency, 9th ed., secs. 50, 465*n*; Parrish *v.* Koons, 1 Pars. 79; Twitchell *v.* Philadelphia, 33 Penn. St. 212; but need not be under seal, Bauer *v.* Dubois, 43 Penn. St. 260.]

the body of the instrument altogether, and sign it in the name of the principal, "by A. B., his agent."[1] It is not sufficient to protect the agent from personal liability upon the contract, to state in the writing that he is agent; he must also state the name of his principal.[2] No verbal evidence is admissible to discharge from his liability, as principal, a person who has signed a written contract, which does not disclose the name of the real principal. Hence, brokers and auctioners, who do not, in the written contract of sale or purchase, disclose the name of their principals as the contracting party, are, though known to the other party to be brokers or auctioneers, personally liable upon the contract.[3] Where the contract has been signed by an agent, acting for an undisclosed principal, the other party will have a right to hold the real principal, and to introduce verbal evidence to prove the agent's authority to bind him[4] An agent will bind his principal only so far as the principal has given him authority, or has represented to the other party that the agent has authority, to bind him. The mere declarations of the agent as to the extent of his authority, though made at the time that the con-

[1] [Story on Agency, 146–148; 1 Sugden V. 82.]

[2] Thompson *v.* Davenport, 9 Barn. & Cress. 78; [2 Smith's L. C., 7th Am. ed., 362; Smith's Mer. Law, 3rd Am. ed., 177.]

[3] Franklin *v.* Lamond, 4 Man., Gran. & Scott, 637; Higgins *v.* Senior, 8 Mee. & Wells. 834; Addison on Cont. 642; [Story on Agency, sec. 267.]

[4] Trueman *v.* Loder, 11 Ad. & Ellis, 495; [2 Smith's L. C. 368, 369.]

tract is signed, are not evidence against his principal to prove the authority.[1] It devolves on the party dealing with the agent to ascertain exactly how far the agent's authority extends.[2] If it is contained in a writing, he must call for the writing, and, at his own peril, construe its terms. Should the agent be unable to produce it, at the time the contract is signed, that fact will be evidence that his authority has been revoked.[3] If, on the production of the writing, it appears that the agent is authorized not only to sell, but to convey, the purchaser should, in Ohio, insist on the agent having the power recorded, before the contract of sale is signed. A principal who leaves in the hand of an agent, after the revocation of his authority, a power of attorney, will be bound to any honest person subsequently dealing with the agent, on the faith of the power, and without notice of its revocation.[4] In Ohio, a wife who has joined with her husband

[1] [1 Greenleaf Ev., sec. 114; 2 Id., sec. 63*n*; Story on Agency, sec. 136 and *n*.]

[2] Paley's Agency, by Dunlap, 202. ["This is the rule with reference to a particular agent. But where the agency is not held out by the principal, by any acts, or declarations, or implications, to be general in regard to the particular act or business, it must from necessity be construed according to its real nature and extent; and the other party must act at his own peril, and is bound to inquire into the nature and extent of the authority actually conferred." Story Agency, sec. 133; Smith Mer. Law, 173.] Fenn *v.* Harrison, 3 Term R. 757; Skinner *v.* Dayton, 5 Johnson's Cha. 365; 2 Kent, 621.

[3] [Story Agency, sec. 72; 2 Greenleaf Ev., sec. 63.]

[4] Story Agency, sec. 470; [2 Greenleaf Ev., sec. 68*a*.]

in executing a power of attorney, may, at any time previous to the sale and conveyance of the land, revoke the power, so far as relates to her interest in the land, by an instrument recorded in the county wherein the land lies. The revocation in such cases is inoperative until the instrument is recorded.[1] Where the authority given to the agent was by word of mouth, he is a competent witness, for either party, to prove the extent of the authority.[2] One of the most common cases in practice is that of authority given by mere employment, without any definite instructions. A man who employs another having a particular vocation, to do an act in the line of that vocation, does, by the very act of employment, represent him to all who may honestly deal with him, in ignorance of any private instructions his principal may have given him, in the line of that business, as having authority to do what is usual, in the usual manner, in the transaction of the principal's business. Private instructions given by the principal to his agent do not, in such cases, limit the authority of the agent as against those dealing with him, in the regular course of business, without knowledge of the limitations.[3] A contract signed by one of the contracting parties as agent for the opposite party, in pursuance of a verbal authority, is not a compliance with the statute of frauds.[4]

[1] [R. S. 1880, sec. 4109.]
[2] 1 Greenleaf Ev., sec. 416.
[3] Smith's Mer. Law, 170, 173; Story on Agency, sec. 73.
[4] [1 Sugden V. 219; Story on Agency, sec. 9.]

SEC. 3. Sales by auction are within the statute of frauds, and require a written contract, in the same manner as private sales. The auctioneer's clerk is, for the purpose of signing the contract on the acceptance of a bid, the agent for both buyer and seller.[1] But the auctioneer has not, by virtue of his employment, any authority to receive the purchase money on a sale of land,[2] nor to make any stipulations, after the bid is accepted, with respect to the title.[3] Verbal declarations, made by an auctioneer in the auction room, contrary to the printed conditions of sale, are inadmissible in evidence, unless, perhaps, the purchaser has particular personal information given to him of a mistake in the particulars of sale.[4]

SEC. 4. The necessity of a written contract, in the case of a sale of land, is absolute. The importance of having it carefully prepared, so that it shall accurately state all the terms of the engagement, and the nature and description of the property, will be apparent from a consideration of some of the rules of law applicable to the subject. The written contract excludes all evidence of previous

[1] [1 Sugden V. 218; Smith's Mer. Law, 619.]

[2] [2 Pars. Cont. 615; but see Story on Agency, sec. 108*n*. "Whether an auctioneer has authority to receive the whole purchase money on a sale of real estate, or only the deposit, may admit of some question." The weight of authority would seem to be, that the auctioneer has no implied authority to receive the purchase money in such cases.]

[3] [Story on Agency, sec. 108.]

[4] [1 Sugden V. 23; Story on Agency, sec. 107.]

negotiations and conversations upon the subject; all verbal evidence of any contemporaneous agreement, which would alter the legal effect of the writing; and all verbal evidence of a subsequent waiver of any of the terms of the writing.[1] The writing is the sole repository of the agreement, The party seeking performance of it is bound, in the courts of law, to show a literal performance, or an offer and readiness to perform it, in all its parts, by himself. No allowance is made for any departure from its terms, either in respect of the time of performance, or for mistakes in the description of the premises, or for defects of quantity. If he was not ready to perform what he engaged to do, on the day named in the contract for performance, or if he was not able then to convey the full title, and the very parcels described in the contract, all his remedies at law are gone.[2] His remedies in equity will be considered in sec. 9.

Sec. 5. It is an implied condition in all sales that the seller shall produce a fair marketable title, to which no reasonable objection can be made.[3] If there was at any time a separation of the legal and equitable titles, the purchaser has a right to insist on having both conveyed to him. No purchaser is bound to accept a title depending upon a doubtful question of law—or upon facts, the evidence of which it is impracticable for him, at the time the

[1] 1 Greenleaf Ev., sec. 275.

[2] Adam's Equity, 85; [1 Sugden V. 397.]

[3] Adam's Equity, 84; [1 Sugden V. 24, 456*n*, 516, 577*n*.]

deed is tendered, to investigate with satisfactory results. Thus, if the title depends on the validity of a marriage—or upon a condition, and is liable to be forfeited by a breach of it—the seller can not, in the absence of satisfactory evidence of the marriage, or of the performance of the condition, insist on the buyer taking the title.[1] If there are incumbrances on the property, not disclosed at the time of the sale, the buyer may require them to be paid off, before he takes his deed. No one is bound to accept or give an indemnity for a defective or incumbered title.[2] No purchaser should accept a conveyance until the incumbrance is removed; for, if he does, he will have no remedy whatever, except by a suit upon the covenants in his deed, after the incumbrance has been enforced against him.[3] Imperfect deeds must be corrected, and unrecorded deeds recorded, at the expense of the seller.

Sec. 6. As the legal title to land can not be transferred, except by deed, the seller, notwithstanding the contract of sale, if it is silent upon the subject, is entitled to retain the possession of the land, and to exercise the other rights of the legal owner, until the delivery of the deed. But the courts of equity, considering that a valid contract obliges the seller to convey the land to the buyer, and that that which ought to be done should, in

[1] [1 Sugden V. 577.]

[2] Bisp. Pr. Eq., secs. 378, 379.

[3] Woodford *v.* Leavenworth, 14 Ind. 314; [1 Sugden V. 10, 521*n.*]

justice, be considered as already done, whatever formal proof of the transaction may be yet lacking, treat the buyer, from the moment the contract is signed, as the owner, and the seller, though they do not disturb his legal possession, as trustee for the buyer, and therefore bound to use his possession for the benefit of the buyer. The consequences of thus treating the contract as a conveyance of the equitable title, are to give all the benefit of any increase in the value of the land to the buyer, and to put upon him all the risks of any decrease or loss, whether caused by natural decay or by inevitable accident, or by wrongful violence; and to entitle the seller, if, in the event, it is proved that he had a title, notwithstanding the subsequent destruction of the property, to be paid the full amount of the purchase money; and to entitle the buyer to apply to equity for relief, if the seller attempts to do any act, in relation to the premises, inconsistent with the terms of the contract, or the buyer's right as equitable owner.[1]

Sec. 7. If the buyer is put into possession by the seller, the presumption of law is, that he takes possession as owner, in performance of the contract, and he will therefore be entitled, even in the absence of any written contract of sale, to compel the seller to convey the land to him, in all cases where he has purchased for value and the contract is fair and just in all its parts, and the conduct of

[1] 1 Sugden V. 270; 1 Story's Eq. Juris., sec. 64*g* [sec. 789]; Adam's Equity, 140; [Bisp. Pr. Eq., sec. 364].

the buyer has not been improper. In Ohio, no lapse of time will bar the right of the buyer, who has been put into possession, from his claim to have a legal conveyance from the seller.[1] If the buyer is aware of objections to the title, he should not take possession, since his doing so will be evidence of his waiver of all known objections. If a nuisance exists upon the premises at the time of the sale, and is suffered to remain after he takes possession, he will be personally liable for its continuance.[2]

SEC. 8. If, upon an investigation of the title, it is discovered, before a deed is made, that the seller does not possess a title to the extent required by the contract, he is not liable in damages for the defect; but the buyer is at liberty to take the land with the defect, abating a proportionate part of the price; or, if the defect is material, to decline going on with the bargain. If the buyer was let into possession, and the title fails before conveyance, he is not liable to pay rent in respect of such occupation, while the contract remained unrescinded.[3]

SEC. 9. In section 4 it was stated that the necessity of a written contract, in the case of a sale of land, was absolute, and that no damages could be recov-

[1] [Ohio R. S. 1880, sec. 4974; Ky. Gen. Stat. 1881, p. 636.]

[2] [1 Sugden V. 84;] King *v.* Pedley, 1 Ad. & Ellis, 822; Rich *v.* Basterfield, 4 Man. Gran. & Scott, 783.

[3] 1 Story Eq. Juris., secs. 778, 779; [2 Id., secs. 796–799;] Adams' Equity, 89; [1 Sugden V. 275; 1 Wash. Real Prop. 591, 592.]

ered at law, upon the breach of the contract, unless the plaintiff could show that, on the day named, he was ready and offered to perform the contract, in strict accordance with its terms. The courts of equity have, however, intervened in cases where there is such a part performance of a verbal contract for the sale of land as would make it a fraud, as distinguished from a mere disappointment, on the buyer, for the seller to refuse to convey; and have compelled the latter specifically to complete the transaction. To sustain a bill for specific performance of a verbal contract of sale of land, it is not enough to show a breach of contract, and the disappointment of just expectations by the other party's refusal to keep his engagement. The payment of purchase money, the incurring of expenses for surveys, or the examination of title, are, therefore, no part performance. But, to put the buyer into possession solely in consequence of the contract, or to allow him to make repairs, on the same footing, and then to repudiate the contract, would be a fraud; for the suppression of the contract, which was the only authority to enter into possession or to make repairs, would leave the buyer liable to an action at law for trespass. If the buyer were, therefore, in possession under a prior contract, his possession, not being referable to the verbal contract of sale, would be no act of part performance.[1] Intimately connected with the doctrine of

[1 Story's Eq. Juris., secs. 759–763; Bisp. Pr. Eq., secs. 384–385; 1 Sugden V. 225–233.]

part performance, is the practice of the courts of equity to enforce a specific execution of an agreement, whether written, or resting on verbal evidence and fortified by part performance. Either party may invoke the aid of the court, and it is no objection to the exercise of the jurisdiction that the complainant has not signed the contract of sale, if the party to be charged has signed it; nor that the contract is verbal only, if there has been a part performance, in the sense above suggested. Where the contract is fair, is for value, is made by persons competent on both sides to bind themselves, gives rights which the parties may mutually enforce against each other, and its enforcement in terms is practicable and necessary for the purposes of complete justice, a court of equity will, ordinarily, in its sound discretion, at the suit of either buyer or seller, decree a specific execution of the agreement, by requiring the buyer to pay the price, and the seller to execute a deed. If a suit is brought within a reasonable time, it is no objection that the complainant was not ready on the day fixed for performance, nor that in the contract there is a mistake in describing the quantity or quality of the land; nor that at the time of the signing of the contract the complainant had no title; nor that he can not now make a title to a portion of the parcels sold: if the delay in offering to perform was not unreasonable; if the error in description is so immaterial as not to mislead the buyer; if a title can be made before the final decree in the present suit; and if the failure of title to a portion of the prem-

ises does not disappoint the buyer with respect to the intended use of the premises, and unreasonably impair the value of the property as a whole. In case substantial justice will be done by carrying out the contract, and an abatement in the price will be a full compensation for the defect, the buyer will be required to take the property, and be allowed a deduction from the purchase money.

Sec. 10. A misrepresentation of a matter of fact, false within the knowledge of the party making it, reasonably relied on by the other party, and constituting a material inducement to his contract, is a fraud, which entitles the person upon whom it is practiced to repudiate the contract. But the law never assumes that the buyer relies on the opinion, or random commendations of the seller; and therefore no misrepresentation by the seller as to his opinion, or the opinion of others, concerning the value of the property, or the chances of its increasing in value, or of its being resold at advantage, though known to be false, amounts in law to a fraud.[1] A false statement of the actual amount of rent received is fraudulent; for it is an assertion of a matter of fact, by the owner, who has the best means of knowledge, and may, therefore, reasonably be relied on.[2] Mere non-disclosure of advantages or disadvantages is generally not equivalent to fraud, unless the party has undertaken, ex-

[1] [1 Story's Eq. Juris., secs. 191–203; Bisp. Pr. Eq., secs. 213–216; 1 Sugden V. 370–372.]

[2] [1 Sugden V. 5; Pollock's Cont. 473.]

pressly, to make a full disclosure, or it is implied that he shall, from the nature of the contract. The contract of the man, mentioned in scripture, who, having found treasure hid in a field, hid it and bought the field, was not, by our law, fraudulent. In the case of sales by auction, the owner may lawfully reserve a bid to prevent the sacrifice of the property, without notifying the bidders of it, except in cases where the sale is advertised to be "without reserve," or to be "positive," or, in other words, which imply that the highest bidder shall have the property. To buy the property in, after such an announcement, is, in law, a fraud on the real bidder; as is also the employment, in any case, of puffers, to screw up the price by taking advantage of the eagerness of buyers. An agreement among bidders, at an auction, not to bid against each other, but to share the advantages of a purchase made by one of them, is a fraud on the seller. An auctioneer, or other agent, or officer, conducting a sale, can not buy the property, either for himself or as agent for another person.[1]

SEC. 11. If, in reducing the contract of sale to writing, there has been some undesigned insertion or omission which makes it inconsistent with the terms by which both parties meant to abide, a court of equity, when the mistake is admitted or proved, will reform the writing so as to make it express the

[1] Adams' Equity, 176; 1 Story's Eq. Juris., secs. 147, 191–212, 293; Addison on Contracts, 134; 1 Sugden V. 14; 2 Id. 409; [Bisp. Pr. Eq., secs. 209-213; Story on Agency, sec. 107, n.]

real engagement. Verbal evidence to prove the mistake, is admissible. The court will, in like manner, reform the writing, if, by the fraud of either, a stipulation which the parties agreed should be inserted is omitted, or a clause which was not agreed upon, is inserted. If the parties agree as to the form of the contract, and it is deliberately drawn in that form, no misapprehension, under which either party may be, as to the legal effect of the contract when so drawn, will, necessarily, be a ground for rescinding or reforming the instrument. Where the parties have not, in fact, agreed to the same thing—as, where the seller supposes he is selling the machinery in his mill, and the buyer supposes he is buying the land on which the mill stands, the mere existence of a written contract between them, will not, after satisfactory proof of the mistake, prevent the court from setting the transaction aside, as having been carried on under a mistake of fact.[1]

Sec. 12. The refusal of the wife to join in a conveyance of the husband's lands, after he has sold them, sometimes occasions serious inconveniences, and the purchaser is left to his choice of submitting to them or of giving up the contract. The claim of the wife, in such cases, is altogether a contingent one: she has a present right of dower in the land sold, which, if she survives her husband, may become an estate for life, incumbering, to the

[1] Adam's Equity, 168; 1 Story Eq. Juris., secs. 142, 155; [1 Sugden V. 262; Bisp. Pr. Eq., sec. 190.]

extent of a third of the value, the lands sold. If she dies first, the land is thereby disincumbered. The compensation which the purchaser has a right to insist upon, for this risk, in case he elects to take the estate, is to retain in his own hands one-third of the purchase money, paying to the seller the annual interest upon it from year to year, until the death of the husband or wife. If the husband dies first, he has the fund out of which to pay the widow her dower, the value of which, in such cases, is, at common law, a third of the annual value of the land at the date of the sale, and not at the date of the husband's death. Should the wife die first, the husband's consolation will be the balance of the purchase money retained to cover a risk which her death terminated, and now paid over to him. The plan suggested is very seldom resorted to in practice; and in those states, as in Ohio, where the widow is entitled to be endowed of the land according to its value at the time of the assignment, the retention of a third of the purchase money is obviously no sufficient indemnity.[1] The old English rule of sending the husband to jail until his wife consented to join in the deed, is very generally disapproved in the United States. In the event of a married woman refusing to convey lands held by her for her separate use, which she has sold in the exercise of that right of absolute disposal—which the doc-

[1] [1 Wash. R. Prop. 240, 241; Williams R. Prop. 233*n*; Dunseth *v.* The Bank of the United States, 6 Ohio, 77.]

trine of equity that, as to her separate estate, she retains the right of an unmarried woman in spite of her marriage, confers upon her—it is conceived that the ordinary rule, as to specific performance, applies; and that, therefore, she may be compelled to convey in execution of her contract, precisely as an unmarried woman, having made a valid contract for the sale of her lands, would, in equity, be required to convey.[1] With respect to the sale of the wife's lands, not settled to her separate use, the statutes of nearly all the states assume, in requiring the officer taking her acknowledgment to examine her, whether she is then satisfied with the conveyance, or wishes to retract, that no contract of sale made by her can be enforced by judicial sanctions.[2]

SEC. 13. The death of either buyer or seller works no change in the rights of the survivor. He has the same right to a specific execution of the agreement against the representatives of the deceased as he had against the deceased himself. An impediment, arising from those representatives being minors, or otherwise incapacitated to bind their own interests, may, however, necessitate an application to a court, by whom their rights may be bound. The practice of the courts of equity not

[1] [Pollock's Cont. 68, 69*n*; 1 Sugden V. 311; Bisp. Pr. Eq. secs. 101, 102.]

[2] [In many of the states, no separate examination of the wife is now required.]

to grant a decree against minors, without, at the same time, reserving to them a day after coming of age, to show error in the decree, has led, in the states of Ohio, Pennsylvania, Illinois, Iowa, and Kansas, to statutes authorizing the courts conclusively to bind the representatives of the deceased by a final decree.[1]

SEC. 14. The proposal of a married woman to purchase lands, either with her own funds, they not being settled to her separate use, or with funds to be furnished to her by her husband or friends, is to be cautiously acted upon. She has, by law, an absolute right, at any time during the marriage, and within a reasonable time thereafter, to annul any transaction, not respecting an estate settled to her separate use, entered into during her marriage, whether done with or against the consent of her husband. He, also, on learning of the transaction, may, within a reasonable time, repudiate it. Her right to set aside the sale and reclaim the purchase money is not affected, either by her having accepted a deed and taken possession, or by any

[1] [Ala. Code, 1876, secs. 2224–2227; Ill. Rev. Stat. 1880, 303, 304; Ia. Rev. Stat. 1880, 661, 662, secs. 2487, 2488; Kans. Comp. L. 1881, ch. 37, sec. 140; Mich. Comp. L. 1871, 1419–1422; Minn. Rev. Stat. 1878, 611; Neb. Comp. Stat. 1881, 250, 251; Ohio Rev. Stat. 1880, secs. 5797–5802; Pa. Brightly's Purd. 1873, 276, 277; Tenn. Stat. 1871, secs. 2025–2029; Wis. Rev. Stat. 1878, secs. 3907–3912.]

lapse of time, if she comes forward within a reasonable time after her husband's death.[1]

[1] Smith on Real and Personal Property, 880; [2 Kent Com. 150, 168; 2 Blk. Com. 292; Co. Litt. 3*a*; Kelly's Cont. Married Women, 703. "But where, as in this country, a wife, by joining with her husband in a deed, may part with her lands and pass a good title, the joint act of the two, being in all respects as available as if done by her while sole, it would seem that their joint assent in accepting a title should be as valid as in granting one." 1 Wash. R. P. 334.]

CHAPTER II.

OF THE ASCERTAINMENT OF THE QUANTITY OF LAND.

15. Plotting the survey; instruments needed.—16. The surveyor's chain.—17. The contents of rectangles.—18. The contents of triangles.—19. The contents of trapezoids.—20. The contents of polygons.—21. The contents of irregular figures.—22. The effect of the words "more or less."

SECTION 15. Some knowledge of surveying and plotting, and of the more common rules for ascertaining the quantity of land, will be a guard against any gross mistake that may occur in the description of the premises, or in the alleged contents of the land. The only instruments needed are a semi-circular protractor, a pair of dividers, and a scale of equal parts. A scale divided into the fiftieth parts of an inch is very convenient, on account of the accuracy with which, by means of it, links, being the hundredth parts of a chain, can be measured. The more common problems for superficial measurement of land, not requiring the aid of tables of sines and logarithms, are easily solved, and the omission of unknown sides or angles supplied by plotting the survey on a scale of equal parts. Some of these problems will now be stated. For the more difficult ones, which are sometimes involved in cases of partition and the adjustment of boundaries, reference may be had to

Baker on Surveying (Weale's Series), Davies' Elements of Geometry and Trigonometry, Davies' Elements of Surveying, Robinson's Surveying, Gillespie's Surveying, or any approved work on the subject.

SEC. 16. The surveyor's chain was intentionally so constructed as to make 100,000 square links to an acre. It is 66 feet long, divided into one hundred links, each of which is, therefore, 7.92 inches long: 625 square links make a square pole; 16 square poles make a square chain, and 10 square chains make an acre. If the dimensions are expressed in feet, as is the case, usually, in surveys of town lots, an acre contains 43,560 square feet. It rarely happens, under the United States land system, that the boundaries vary much from straight lines.

SEC. 17. Where the land is bounded by four straight lines, and has its opposite sides parallel, the area is ascertained by multiplying the base by the altitude. Thus, a rectangular field, 14 chains 27 links long, and 9 chains 75 links wide, contains 1,391,325 square links; and, as 100,000 square links make an acre, 1,391,325 square links make 13.91325 acres. If the decimals .91325 are multiplied by 4, and the five right-hand figures pointed off, as decimals, the result will express the number of roods and decimal parts of a rood; and if these decimals are multiplied by 40, and the five right-hand figures pointed off as before, the result will be perches and

decimals of a perch. The field would, therefore, contain 13 acres, 3 roods, 26 perches; or, to express it decimally, 13.91325 acres.

SEC. 18. If the land is in the shape of a triangle, the contents are ascertained by multiplying the base and perpendicular together, and dividing the product by 2. Where the length of the three sides is known, add the three sides together, and take half the sum; from this half sum subtract each side separately; multiply the half sum and the three remainders continually together: the square root of the product will be the area. Thus, a triangle whose sides are 342, 384, and 436 feet, contains 62980.14 square feet.

SEC. 19. Where only two sides of the tract are parallel, the area is ascertained by adding the two parallel sides together, and multiplying half that sum by the distance between the parallel sides. Thus, a field bounded by two parallel lines, respectively 30 and 49 chains long, and distant from each other 16.60 chains, contains 65.57 acres.

SEC. 20. If none of the sides of the field are parallel to each other, or if the field has more than four sides of different dimensions, the contents are computed by dividing the figure into as many triangles and trapeziums as may be convenient, and ascertaining the contents of the sum of the triangles, according to the rule stated in section 16. If the land is bounded by four straight lines, no two of which are parallel to each other, and the length

of each side is given, and the two opposite angles are supplements of each other, the area may be found by adding all the four sides together and taking half the sum; subtract each side separately from the half sum; multiply the four remainders continually together, and extract the square root of the last product, which will be the contents.

Sec. 21. In cases where one of the boundaries is a stream, or a public road, it often happens that one side is too irregular in outline to admit of measurement by dividing the field into triangles and trapeziums. Resort is, therefore, had to the plan of drawing a base line as near as practicable to the boundary, and measuring from it, in several places, at equal distances, to the boundary line. To half the sum of the first and last breadths, add the sum of all the intermediate breadths, and multiply the result by the common distance between the breadths, to find the area. If the breadths were taken at unequal distances, the contents may be determined, with tolerable accuracy, by adding all the breadths together, dividing the sum by the whole number of them for the mean breadth, and multiplying that by the length of the base line.

Sec. 22. It seems hardly necessary to add, that the expression, "more or less," following the statement of the contents of land in a contract or deed, where the price has been fixed with reference to the number of acres, covers only such immaterial errors as usually arise from the defects of instruments, the

irregularities of the ground, the difficulty of ascertaining the exact variation of the magnetic needle, and the want of high professional skill in the surveyor. A gross mistake as to the quantity may be corrected, notwithstanding the words "more or less" are in the contract, as well as other mistakes of fact.[1]

[1] Portman *v.* Mill, 2 Russell, 570; [1 Sugden V. 489–492, notes. The difference must be such as to raise the presumption of fraud.]

CHAPTER III.

OF THE PRELIMINARY INQUIRIES AS TO FACTS.

23. If the seller has been disseized.—24. If another person is in possession.—25. If an unrecorded deed exists.—26. If an unrecorded charge exists.—27. If a forfeiture has been incurred.—28. If a condition has been dispensed with.

SECTION 23. It has been already stated, that title depends, not only on documents and records, but also upon facts external to records. Inquiry into such facts may satisfy the purchaser that no title can be made by the seller, and the expense of a further search be thereby avoided. In those states where the English statute against the granting of pretended titles has been adopted or re-enacted, the first inquiry is, whether the seller, or he under whom he claims, has been turned out, and is kept out, of possession by an adverse claimant. Where those statutes exist, as in the states of Kentucky and Indiana, all conveyances made by a person thus out of possession are invalid.[1] No statute of

[1] [Ky. Gen. Stat. 1881, pp. 180, 255; Ind., by common law, Fite *v.* Doe, 1 Blackf. 127; Germania Ins. Co. *v.* Grim, 32 Ind. 257; also, N. Y. R. S., Vol. 3, p. 2196, sec. 147; but it will not void a grant in Col. Gen. L. 1877, p. 134, sec. 5; Ga. Code, 1873, sec. 2695; Ill. R. S. 1880, p. 307, sec. 4; Ia. Stat. 1880, sec. 1932; Kans. Comp. L. 1881, p. 211, sec. 6; Mich. Comp. L. 1871, sec. 4209; Minn. Stat. 1878, p. 535, sec. 6; Neb. Comp.

the kind is in force in Ohio; but the fraudulent sale of land, to which the seller has no title, is punishable, in that state, by indictment.[1]

SEC. 24. Open, visible, notorious possession of land operates as notice of the occupant's rights to all purchasers, who will therefore take the premises, whether they have actual knowledge of the possession or not, subject to the occupant's right, whatever it may be. Attempts have been made to throw doubts upon the applicability of this rule, where the occupant's title depends on a recordable instrument which has not been recorded; but no cautious purchaser will omit to inquire as to the actual claims of any person whom he finds in possession of the land.[2]

SEC. 25. During the interval allowed by law between the execution and recording of a deed, it may be impracticable to ascertain whether a prior conveyance, which if recorded in due time will have the priority of right, has been already made and delivered. The character of the seller is, in most cases, the only security of the buyer. A purchase for cash, from a seller in failing circumstances, may, therefore, turn out to be a total loss. The periods allowed by law, in the several states, for recording deeds, are stated in the chapter upon deeds.

Stat. 1881, p. 391, sec. 31; Ohio, Hall *v.* Ashby, 9 Ohio, 96; Pa., Cresson *v.* Miller, 2 Watts, 272; Wis. R. S. 1878, sec. 2205.]

[1] [R. S. 1880, sec. 7091.]

[2] Adams' Equity, 153, note; 4 Penn. St. R. 173.

SEC. 26. The existence of unrecorded charges, though they involve the incautious purchaser in unexpected hazards, may be ascertained by inquiry. Of this character, are the liens of mechanics and material men, which take effect from the time the labor is completed or the materials are furnished; the lien of contractors, under city ordinances, for paving, or lighting, the adjacent streets; the lien, created, in Kentucky, by the arrest of a felon, on his estate, in favor of the victim of his crime; the lien of the United States, under the internal revenue act, to secure the payment of taxes; and the like. The nature of these charges will be considered hereafter. It is sufficient for the present purpose to call attention to the necessity of making inquiries in regard to them. Some are, in strictness, matters of record, as city ordinances and taxes; but the existence of the charge depends also on matters of fact.

SEC. 27. Estates liable to forfeiture for breach of condition subsequent, can seldom be forced upon unwilling purchasers, since there must always be some uncertainty whether the title has not already been divested. Permanent leaseholds, renewable forever, are, in Ohio, almost universally clogged with such conditions. The purchaser may inquire, but can not be absolutely safe, unless the person entitled to enforce the forfeiture, should one have been incurred, will confirm his title by uniting with the seller in the deed, or by executing a separate instrument. A verbal assurance made to the buyer,

in answer to inquiries addressed to the landlord, or paramount owner, would, indeed, operate as an estoppel, precluding him from enforcing a forfeiture; but, from the difficulty of preserving the proof of such assurance, it would be of little value as a muniment of title.

SEC. 28. Where the purchaser is buying the reversion of an estate, and wishes to secure the continued existence of conditions imposed on the tenant, or holder of the base fee, his attention must be called to the question, whether, by the terms of the deed containing the condition, a verbal or mere written dispensation with its performance, without a deed, will be valid; and, if so, whether, in fact, any such dispensation was ever granted. It seems so contrary to natural reason that a single instance of a dispensation with the performance of a condition should put an end to the condition forever, that it is necessary to assure the unprofessional reader that such is the settled law.[1]

[1] [Dumpor's case, 1 Smith's Leading Cases, 7th Am. ed., 93–136.]

CHAPTER IV.

OF THE SEARCH FOR DEEDS AND ABSTRACTING THEM.

29. How far back the search must extend.—30. The United States the source of title; Indian titles.—31. The land system of the United States.—32. Land descends and is transferred only according to the law of its situs.—33. Rule modified by statutes.—34. Compulsory transfers by decree in equity.—35. The searcher's preliminary sketch of title.—36. The heading of the abstract.—37. The patent from the government—38. Equitable title behind the patent.—39. Deeds; points to be noticed.—40. Law of Pennsylvania as to record of deeds.—41. Law of Ohio.—42. Law of Kentucky.—43. Law of Indiana.—44. Law of Illinois.—45. Law of Iowa.—46. Law of Kansas.—47. Alabama, Colorado, Georgia, Michigan, Minnesota, Nebraska, New York, Tennessee, Wisconsin.—48. The names of the parties to the deed.—49. Words of inheritance.—50. The words of grant; statutory effect of certain words of grant.—51. The consideration, and whether paid or not.—52. The description of the parcels.—53. Descriptions imperfect by omission.—54. Descriptions imperfect by falsa additions.—55. Descriptions imperfect by errors.—56. The declarations of trust.—57. Purchaser's obligation to see to application of purchase money.—58. The rents and reservations.—59. The conditions and limitations.—60–62. Covenants which bind subsequent owners.—63. Effect of dispensing with a condition.—64. Effect of entry for breach of condition.—65. Covenants enforced in equity.—66. The usual covenants.—67. Covenant of seizin.—68. Covenant of title.—69. Covenants for quiet enjoyment.—70. Covenant against incumbrances.—71. Covenants that conditions have been performed.—72. Recitals are notice.—73. The testimonium clause.—74. Seal-

ing; scrawl seals.—75. Erasures and interlineations.—76. The attestation by witnesses.—77. The acceptance of trusts.—78.

SECTION 29. Adverse possession for the period fixed by the statute of limitations is, in its effects, equal to a perfect legal title. The seller, therefore, is bound to trace his title back, at the least, through that period. The exceptions in the statute in favor of infants, lunatics, prisoners, married women, and non-residents, introduce an element of uncertainty, in point of time, against which there is no certain precaution, except that of extending the search beyond the ordinary period of human life. The existence of intermediate life estates, deferring the claims of remainder-men, requires the same care. In England, where the limits of the statute are fixed at forty years, a title that can not be traced back for sixty years, is not marketable.[1] It ought not, therefore, to be considered an unreasonable demand, if, in the western states, the buyer insists on the production of a title, extending from the patent granted by the United States to his own time, and particularly so in those states, as in Ohio and Kentucky, where parol evidence is admissible

[1] [1 Sugden V. 551; 2 Id., p. 3. "The Vendor and Purchaser Act, 1874, now provides, that, in the completion of any contract of sale of land made after the 31st Dec., 1874, and subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require, in place of sixty years." Williams R. P. 449.]

to show an equitable title anterior to the patent, converting the patentee into a trustee for the equitable owners.[1] If no paper title, founded upon the patent, can be produced, satisfactory evidence of adverse possession for the period of sixty years ought to be required. Where the purchaser chooses to run the risks of taking a title not founded on a patent, nor on sixty years' possession, the searcher should state, in his abstract, at what date or conveyance his client directed him to begin, in order that no blame may attach to him should it subsequently appear that the seller had no title.

Sec. 30. No title derived from the Indians is recognized in the courts, except in those few cases where they have been made at the time of a treaty with the government, and have been sanctioned by the United States.[2] As a rule, in all the western states, except in the military reserves, the United States is the source of title for all lands. The general statutes of the United States, regulating the sales of the public land, are referred to in the Index to the United States Revised Statutes. The details, as well as the private acts, are foreign to the design of this work.

Sec. 31. The mode in which the public lands of the United State are surveyed, conduces, in the

[1] [3 Wash. R. Prop., p. 197.]
[2] [3 Wash. R. P. 186, 187.]

greatest possible degree, to compactness of settlement. This method is rectangular. The greatest division of land is called a township, containing 23,040 acres. The township is six miles square, and is subdivided into thirty-six equal divisions, or square miles, by lines crossing each other at right angles, called sections. The section contains 640 acres, and is subdivided into four parts, called quarter sections, each of which contains 160 acres. The quarter section is subdivided into two equal parts, containing 80 acres each, called half-quarter sections, or eighths of sections, which last is the smallest regular subdivision. The fractional sections containing less than 160 acres, are not liable to be subdivided. Those fractional sections containing 160 acres and upward are liable to be divided in such manner as to preserve the most compact and convenient forms. The sections are numbered, beginning with 1, at the south-east corner, and proceeding north to the north-east corner, and beginning with 7, opposite 1, on the next line west, and so on; but the system is not uniform; the sections in some ranges being numbered from east to west. A range is any series of contiguous townships, laid off from north to south. The ranges are numbered north and south from the base or standard line, running due east and west; and are counted from the standard meridian, east and west.

SEC. 32. The state in which the land lies has the exclusive power to determine how land shall be

acquired, what contracts for the sale of it are valid, and how it shall be conveyed, descend, and be incumbered No act of another state, and no adjudication of any court of another state, can, in any manner or degree, affect or control it.[1]

SEC. 33. This rule, which is universally recognized, is, in many of the states, made the subject of statutes, by the effect of which deeds, wills, and other instruments affecting the title to land, made in another state and executed in the forms prescribed by law there, are effectual to pass the title in the state wherein the land is situate. Thus, in Ohio, deeds, mortgages, powers of attorney, and wills, executed in other states in conformity with the laws of such states, are, on being recorded in Ohio, as valid as if executed within the state in conformity with the Ohio law.[2] The same rule is adopted in Illinois, in respect to deeds, provided that any clerk of a court of record within the state, territory, or district, in which the deed was executed, shall, under his hand and the seal of the court, certify that such deed is executed and acknowledged or proved in conformity to the laws of such state or territory.[3]

SEC. 34. The practice of the courts of equity

[1] Story on Conf. of Laws, sec. 474; Wills *v.* Cowper, 2 Ohio R. 124; Holmes *v.* Remsen, 4 Johnson's Chan. R. 469

[2] [Ohio R. S., secs. 4111, 5937.]

[3] [Ill. R. S. 1880, p. 311, sec. 20, and Kans. Comp. L. 1881, p. 213, sec. 25; Id., p. 1003, sec. 24; Wis. R. S. 1878, sec. 2218.]

to decree a specific performance of a contract, for the sale of land lying in another state, where the defendant has been served with process within the territorial limits of the state in which the court is sitting, is not a violation of, but is subordinate to, this rule. In such cases, no title passes by the decree, nor is any order made directing an officer of the court to execute a conveyance; but the defendant himself, over whom the court has acquired jurisdiction by the service of process upon him, is ordered to execute such a conveyance as shall be valid and effectual by the law of the place where the land lies, to the plaintiff; and the order is enforced by proceeding against the defendant, who refuses to comply with it, as for a contempt of court. If he contumaciously holds out in defiance of the court, the remedies of the plaintiff are at an end.[1]

Sec. 35. All the information which the client can impart having been acquired, the searcher can facilitate his work by making a preliminary sketch or reconnoissance, consisting of a map of the land, upon which the course and distance of each line and the monuments called for are accurately delineated, and a tabular list of the names of the grantors and grantees, with the dates of their respective deeds, and the date and place of their registry, set opposite the names. A conspicuous blank should be left in the list, where the record fails to give the

[1] Story on Conf. of Laws, sec. 424.

desired information as to any conveyance. Any disconnection in the title will thus, at the outset, become apparent; and, if further search is not rendered unnecessary by the existence of an irremediable defect, the external inquiries for missing deeds, or evidence of descents, or other connecting links, may be immediately instituted. Very little difficulty will be experienced in making this sketch in those counties where conveyances are indexed, as they are in Cincinnati, under the number of the section, township, and range, into which, under the acts of Congress, the lands north-west of the Ohio river were laid off. But where conveyances are indexed only under the names of the grantor and grantee, the sketch must contain references to all deeds made by every grantor, not only during the period of his apparent ownership, which is a matter of course, but to all deeds made subsequent to the present one, during the whole period allowed by law for recording deeds. All these deeds must be examined, and stricken from the sketch, if found not to relate to the land in question. The necessity of this seemingly unnecessary labor will be apparent upon considering that no negligence can be imputed to any prior grantee in delaying to record his deed until the last day allowed to him by law for recording it; and that, therefore, if recorded on that last day, his deed will have priority over a deed of subsequent date, though the latter was recorded first, and was taken in ignorance of the existence of the former. The ultimate limit within which a deed, subsequent in point of record,

is allowed to over-ride one previously recorded, is, in Ohio, six months; in Kentucky, twelve months; in Pennsylvania, twelve months; and in Indiana, forty-five days. In Illinois, Iowa, and Kansas, deeds take effect as against *bona fide* purchasers only from the time that they are lodged for record in the proper office.

SEC. 36. The object of the abstract is to furnish the buyer and his counsel with a statement of every fact, and an abstract of the contents of every deed on record, upon which the validity and marketableness of the title depend: so full that no reasonable inquiry shall remain unanswered; so brief that the mind of the reader shall not be distracted by irrelevant details; so methodical that counsel may form an opinion on each conveyance as he proceeds in his reading; and so clear that no new arrangement or dissection of the evidence shall be required. The buyer has a right to demand a marketable title. He has a right to demand that the abstract of title shall disclose such evidence of that title, as will enable him to defeat any action to recover, or incumber, the land. Any one who has tried to add up a crooked column of figures, can appreciate the fact, that an abstract, which faithfully states all the facts, may yet be very confusing from the mere inattention of the searcher to the details of arrangement. The first thought that necessarily occurs to the mind of the reader should, therefore, come first; whom this abstract was made for, what property it relates to, and when it was made. Thus:

AN ABSTRACT *of the title of* M. E. CURWEN *to* 86-100 *of an acre in Section* 29, *Township* 3, *Fractional Range* 2, *bounded* [stating the exact boundaries], *made January* 12*th*, 1864.

Each deed, will, descent, judgment, or other step in the title, should then be distinctly stated in separate paragraphs, with several blank lines between them, and numbered continuously to the end of the abstract. If the owner has directed at what period the abstract shall begin, the statement of that fact will constitute the first paragraph. Thus:

1. *Mr. Curwen directed that the goodness of John Doe's title to this parcel of land should be assumed.*

2. Deed, 4th May, 1806; recorded, 4th December, 1807; Deed B. 11, p. 9; Hamilton County Recorder's Office; John Doe and Mary Doe, his wife, *to*
Henry Stephen, Josiah W. Smith, and John Adams.

In proceeding to state the contents of documents, the abstract should state the nature of the conveyance, the date of it, and the fact of its registry, with the date, the volume, and page, and the title of the record, and the office to which it belongs. These particulars advise the reader, at the outset, to what points his attention should be directed, and the statement must be such as to enable him to judge whether it is an instrument which the law allows or requires to be recorded, and whether it is recorded within the time allowed by law, and in the

proper office. The record is not of itself notice of instruments which the law does not require to be recorded; nor is it notice of instruments required by law to be recorded, which are not executed with the formalities required by law, or which are not recorded in the proper county, and in the proper office of that county, and, in some instances, within the time allowed by law. The date of an instrument may determine its priority over a rival claim, under the ordinary rule, in cases not within the registry laws, that priority, in point of time, confers superiority in point of right. It also enables the searcher, by comparing it, at one glance, with the date of the record on the same line, to judge whether the deed has been recorded within the limited time. In cases of deeds executed under prior repealed laws, the statement of the date guards the reader against the error of overlooking that fact and rejecting a valid instrument for its want of conformity to the law now in force. Where the instrument is not dated, which sometimes happens from an omission to fill blanks in printed forms, external evidence of the date of delivery should be required.

SEC. 37. The first step, in all ordinary cases, being the patent from the United States, the abstract begins with that document. In Ohio, and in Kansas, the patent may be recorded in the office of the recorder or registrar of deeds of the county in which the land lies.[1] If not otherwise attainable,

[1] [Ohio R. S. 1880, sec. 4137; Kans. Comp. L. 1881, p. 576,

an office copy can be procured from the general land office at Washington, upon filing there the affidavit of the owner, stating his ownership and occupation of the land, and the purpose for which the copy is wanted. The fees required are at the rate of fifteen cents per hundred words, and one dollar for the seal. (R. S. U. S., secs. 460, 461.) No proof can be required of the execution of the patent, when the original is produced, the courts taking judicial notice of the signatures of the heads of the departments and of the official seal of the land office.[1] The points to be noticed, in the abstract, are the date, the name of the person to whom it was issued, the words of heirship, the recital of the payment of the purchase money, the person by whom the payment was made, the recital of any assignment by the certificate holder, his representatives or assigns; the signing, sealing, and volume and page of the record at Washington and in the county where the land lies.

SEC. 38. In Ohio and Kentucky, the existence of an equitable title anterior to the patent, can be shown, and may be enforced against all persons who have purchased the land with notice of its existence. The recital in the patent of an assignment of the certificate by the administrator of the

sec. 1; so also Ala. Code, 1876, sec. 2231; Ia. Stat. 1880, p. 925; Mich. Comp. L. 1871, p. 1353; duty of registrar to record, Mich. L. 1877, p. 22; Min. R. S. 1878, p. 805, sec. 93; Neb. Comp. Stat. 1881, p. 392, sec. 1; Wis. R. S. 1878, sec. 2235.]

[1] 1 Greenleaf Ev., secs. 6, 503.

enterer, may amount to such notice; for, *prima facie*, he has by law no authority over the realty, and can only acquire authority by an order of court. An assignment of the certificate made by him without such authority will not bind the heirs of the decedent.[1]

SEC. 39. The title to real property is transmitted by deed, by will, by descent, by marriage, or by the execution of the judgment or decree of a court of competent jurisdiction. Deeds shall first be noticed. The particulars to be abstracted are:

1. The nature of the conveyance, the date of it, the fact of the registry, with the date, the volume, and page, and the title of the record, and the office to which it belongs. The reasons for this have already been stated.

2. The names of all the grantors, the names of their wives, the character in which the grantors act, if in any official or fiduciary character, and their residences, if the deed appears to have been executed abroad.

3. The names of all the grantees, the words of heirship, or other words of limitation of the estate, and the character in which the grantees take, if in any official or fiduciary character.

4. The words of grant, and whether the wives are joined in the granting clause.

5. The amount or nature of the consideration,

[1] Reeder *v.* Barr, 4 Ohio, 446; Matoon *v.* Clapp, 8 Ohio, 248; Bonner *v.* Ware, 10 Ohio, 465; Bell *v.* Duncan, 11 Ohio, 192.

and whether it is recited to have been paid, or to have been secured, and how secured, and by whom paid, or whether it is unpaid; and, if paid, whether a receipt is indorsed on the deed, in those states where that practice prevails.

6. The description of the premises conveyed, in the exact language of the deed, including all the exceptions.

7. If the *habendum* is expressed in any other than the usual formal words, "to the use of the grantees and their heirs," the variation should be noticed; if otherwise, this clause should not be mentioned.

8. The declaration of trusts, if any are contained in the deed, stating them in the words of the instrument.

9. The rents or other reservations out of the profits of the land.

10. The conditions and other limitations upon the title or the use of the land.

11. The covenants, which are sufficiently stated by naming them, except in cases where unusual covenants are inserted.

12. The recitals in the deed.

13. The testimonium clause, including the signing and sealing, and the special release of dower, if such a provision is inserted in it, the attestation of the subscribing witnesses, the words of attestation, and the number of the subscribing witnesses.

14. The stamp.[1]

[1] [The Internal Revenue Act, 13 U. S. Stat. at Large, 291, secs. 151, 156, 158, June 30th, 1864, requiring that every deed, instru-

15. The acknowledgment or proof of the deed, the date of the acknowledgment, the name and official title of the officer before whom it is taken, the place in which it is taken, whether all the grantors unite in it, whether the wife unites in a joint acknowledgment with the husband, the wife's separate acknowledgment on private examination, whether the officer made known to her the contents of the deed, whether she then expressed herself still satisfied, the signature of the officer, his seal, if he has a seal; whether the certificate is indorsed on the deed itself, or is on a separate paper attached to the deed; and, in case of deeds made out of the county, the proof of the official character of the officer before whom the deed was acknowledged or proved.

16. Where the validity or effect of a deed depends upon its being made in conformity with the

ment, or writing, whereby any lands, tenements, or other realty sold, shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser, must be stamped, was repealed by Act of Congress, June 6th, 1872, which went into effect Oct. 1st, 1872 (17 U. S. Stat. at Large, 256). Stamp duties upon deeds, etc., were imposed by Acts of Congress, beginning with the Excise Tax Law of July 1st, 1862, which went into operation Sept. 1st, 1862. All deeds, between July 1st, 1862, and Oct. 1st, 1872, required a stamp. There was a proviso in the 158th section of the Internal Revenue Act of June 30th, 1864, that the "title of a purchaser of land, by deed duly stamped, shall not be defeated or affected by want of a proper stamp on any deed conveying said land by any person through or under whom his grantor claims or holds title." Williams' R. P. 150*n*. The Act of March 3rd, 1865, allowed the instrument to be stamped afterward.]

law of another state, some proof of that conformity should be required, and stated in the abstract.[1]

[1] [In Cooley's Blackstone, the following abstract of title is set out, which may give the student an idea of what is necessary to be done before pronouncing an opinion as to its validity:

"South-west quarter of section 12, town. 9, south, range 2, east, Ohio:

1. Entered by John Hemingway, and patented by U. S. to him Aug. 1st, 1836.

2. John Hemingway to William Jackson, warranty deed; dated September 10th, 1836; recorded March 18th, 1838, in liber B of deeds, page 80. Duly witnessed and acknowledged.

3. William Jackson to Richard Benson, warranty deed; dated March 18th, 1838; recorded same day, in liber B of deeds, page 81. Duly witnessed and acknowledged.

4. Richard Benson and Harriet, his wife, to James Byles, quitclaim deed; dated October 1st, 1862; recorded same day, in liber Y of deeds, page 292. Executed in the State of New York, and properly certified.

5. James Byles, by William Smith, his attorney in fact, to Edgar Bennett, warranty deed; dated July 15th, 1868; recorded October 12th, 1868. In due form of law.

The records of this office show no mortgages or other liens upon the land, and the title appears to be perfect in Edgar Bennett. JOHN DOE, *Register of Deeds.*"

Before passing upon the soundness of this title, the conveyancer must make further investigations. Among those suggested, the following are important:

The identity of the parties, so far as ascertainable, with those in the abstract; an investigation as to the validity of the patent; whether the grantors are married, and their wives are joined in the conveyance; whether the attestation and acknowledgment of the various deeds are in conformity with the statutes in force at the time of their execution; the inference to be drawn from the giving of a quitclaim instead

These particulars, and the statutory provisions respecting them in Pennsylvania, Ohio, Kentucky, Indiana, Illinois, Iowa, and Kansas, will be noticed in their order. And, first, of the date and place of the record of deeds and other instruments affecting the title to lands:

Sec. 40. In Pennsylvania, all written contracts, whether by deed or not, may be recorded in the office for the recording of deeds. If executed in the state, deeds must be recorded in six months from the date of their execution; if executed out of the state, and within the United States, and acknowledged in due form before any officer or magistrate of the state wherein they were executed, authorized by the law of that state to take acknowledgments

of a warranty deed; where a conveyance is made by the heirs of a deceased person, an inquiry as to whether a will has been probated, or administration taken out of the estate; and, in the latter case, whether there were not enough personal assets to pay the debts of the estate, and it has been found necessary to sell the real estate to pay them, and the number, identity, and age, of the respective heirs; where the deed has been executed in another state, and in compliance with its statutes, whether the statutes of the state in which the property is situated allow the deed to be so executed; whether the rights of any of the parties, or any of them, have been extinguished by adverse possession; where the wife has united in the conveyance, whether the execution and acknowledgment of the deed are in due form of law; where a deed has been executed by an attorney in fact, whether the power was duly executed and recorded; whether the homestead law of the state affected the conveyance.

These are a few of the many inquiries which must be made before a title can be passed upon by the conveyancer.]

of deeds, they must be recorded within twelve months from the date of execution.[1] Deeds, not recorded within the time limited, are void as to subsequent *bona fide* purchasers and mortgagees for valuable consideration, whose conveyances are first recorded.[2] Leases not exceeding twenty-one years, where the actual possession and occupation goes with the lease, are not within the registry acts.[3]

SEC. 41. In Ohio, an imperfectly executed instrument, or one not required to be recorded, derives no efficacy from being placed on record.[4] The record of it neither operates as constructive notice to subsequent purchasers, nor can a certified copy of it be used as evidence.[5] As between the grantor and grantee, no recording is necessary to perfect the title, but the record of a perfectly executed instrument, which the law allows to be recorded, and

[1] [Brightly's Purd., p. 473, sec. 76. Commissioners in Chancery in foreign countries may take acknowledgments of deeds. Pa. Sup, p. 2110, sec. 4. Mortgages are a lien from the date of record, except purchase money mortgages, which are a lien from date, if recorded within sixty days. They can not be recorded unless acknowledged or proved. Brightly's Purd., p. 478, sec. 103. Leasehold mortgages must be acknowledged and recorded with the leases. Sup., p. 2004, sec. 8.]

[2] [Brightly's Purd., p. 473, sec. 76; Sander *v.* Morrow, 33 Penn. St. 83. In Philadelphia, deeds are only valid as against subsequent purchasers from date of record, May 25th, 1878, Sup., p. 2111, sec. 5.]

[3] [Brightly's Purd., p. 473, sec. 78.]

[4] [Ramsey *v.* Riley, 13 Ohio, 157.]

[5] [Johnston, Lessee, *v.* Haines, 2 Ohio, 55.]

which is in the line of the title, and is recorded in the proper office, and in the proper books in that office, is constructive notice to all subsequent purchasers.[1] All deeds and other instruments of writing for the conveyance or incumbrance of lands, except mortgages, must be filed for record in the office of the recorder of the county in which the lands lie, within six months from the date thereof; and, if not so filed for record within that time, are deemed fraudulent, so far as relates to any subsequent *bona fide* purchaser having, at the time of making such purchase, no notice of the existence of such former deed or other instrument of writing.[2] Leases of school or ministerial lands, for any term not exceeding ten years, or for any other lands for any term not exceeding three years, are not required to be recorded.[3] Powers of attorney authorizing the execution of any deed, mortgage, or other instrument of writing, for the sale, conveyance, or incumbrance of any land, must be recorded in the office of the recorder of the county in which the lands are situated, previous to the sale or execution of the instrument by virtue of the power of attorney.[4] If a married woman has joined in the execution of the power of attorney, she may, at any time previous to the sale and conveyance of the land, revoke the power, so far as it relates to her interest in the land, by an instrument recorded in

[1] [Irvin's Lessee *v.* Smith, 17 Ohio, 226.]
[2] [Ohio R. S., sec. 4134.]
[3] [Id., sec. 4112.]
[4] [Id., sec. 4132.]

the county where the land lies. The revocation is inoperative until so recorded.[1] These provisions allowing six months to record an instrument, it will be observed, do not include mortgages, which are governed by a different rule.

SEC. 42. In Kentucky, no deed conveying any title to, or interest in land, for a longer time than five years, nor any agreement made on consideration of marriage, is good against purchasers not having notice thereof, or any creditor, or innocent purchasers and creditors of the heirs and devisees of any grantor in such deed as to the lands embraced therein, unless the deed is lodged in the clerk's office of the court of the county in which the property conveyed, or a greater part of it, lies.[2] If made by residents of Kentucky, it must be lodged for record within sixty days from the date thereof; if made by persons residing out of Kentucky and in the United States, within four months; if made by persons residing out of the United States, within twelve months. If recorded afterward, the deed is notice from the time of the recording.[3] Mortgages and deeds of trust in the nature of mortgages take effect from the time that they are lodged for record.[4]

SEC. 43. In Indiana, deeds not recorded within forty-five days from the date of their execution, are

[1] [Ohio R. S., sec. 4109.]
[2] [Ky. Gen. Stat. 1881, p. 255, sec. 8.]
[3] [Id., p. 257, sec. 14.]
[4] [Id., p. 258, sec. 21.]

deemed fraudulent as to subsequent purchasers or mortgagees in good faith for valuable consideration.[1]

SEC. 44. In Illinois, deeds take effect, as against all creditors and subsequent purchasers without notice, from the time they are filed in the office of the recorder for record; and from that time are notice, whether acknowledged or proved according to law or not. The revocation of a power of attorney for the sale or conveyance of land is effected by a recorded deed of revocation.[2]

SEC. 45. In Iowa, no instrument affecting real estate is lawfully recorded unless it has been previously acknowledged or proved.[3] No instrument is valid, as to subsequent purchasers for valuable consideration, without notice, unless recorded in the office of the recorder of deeds in the county where the land lies.[4]

SEC. 46. In Kansas, deeds take effect as against subsequent *bona fide* purchasers for value, without notice, from the time that they are recorded in the office of the register of deeds, in the county where the land lies.[5] Parol leases, not exceeding one year's duration, are valid.[6]

[1] [Ind. R. S. 1881, sec. 2931.]
[2] [Ills. R. S. 1880, p. 316, secs. 30–31.]
[3] [Ia. Stat. 1880, sec. 1942.]
[4] [Id., sec. 1941.]
[5] [Kans. Comp. L. 1881, p. 212, sec. 21.]
[6] [Id., p. 464., sec. 5.]

[SEC. 47. In Alabama, Colorado, Michigan, Minnesota, Nebraska, New York, Tennessee, and Wisconsin, deeds take effect as against all creditors and subsequent purchasers without notice, from the time they are filed for record.[1]

In Alabama, all conveyances, mortgages, and instruments in the nature of mortgages, must be recorded within three months.[2] In Georgia, deeds must be recorded within one year,[3] and mortgages within thirty days from date, in the office of the clerk of the superior court of the county where the land lies.[4]]

SEC. 48. With respect to the clause containing the names of the parties, it is manifest that merely signing, sealing, and acknowledging a deed in which another person is grantor, and which contains no words applicable to the interests of the signer, can not, in law, be held to be a legal grant; yet the mistake of naming several persons as parties in the premises, and confining the granting words to one of them, is not very uncommon. In Iowa, if the wife joins her husband in a deed, it passes her rights, unless the contrary appear in the face of the con-

[1] [Ala. Code, 1876, sec. 2149; Col. Gen. L. 1877, p. 139; Mich. Comp. L. 1871, sec. 4231; Minn. R. S. 1878, p. 537, sec. 21; Neb. Comp. Stat. 1881, p. 389, sec. 16; N. Y. R. S 1882, vol. 3, p. 2215; Tenn. Stat, sec. 2072; Wis. R. S. 1878, sec. 2241.]

[2] [Ala. Code, 1876, sec. 2166.]

[3] [Ga. Code, 1873, sec. 2705.]

[4] [Ga. Sup. 1878, sec. 334; Act 1876, p. 34.]

veyance.[1] In Ohio, the interest of the wife passes, whether it be a right of dower or the fee, if she unites as grantor in the granting clause;[2] and the omission by mistake of granting words, in deeds executed subsequent to April 1st, 1849, may be corrected against the wife, as well as against the husband.[3] Where the grantor is acting in an official, fiduciary, or representative character, the deed should be carefully examined, to see if, in fact, it binds the interest it professes to convey. Deeds, executed by agents, must, by the common law, be expressed to be, throughout, the deed of the principal. It is not sufficient, as is the case with unsealed contracts, that the fact of agency can be gathered from the whole instrument. If not made in the name of the principal, it is not his deed, but the deed of the agent alone.[4] This rule is, in Ohio, altered by statute, which gives effect to the instrument as the deed of the principal, if the fact of the agency appears upon the face of the writing.[5] The most common errors, under this head, arise in the deeds of trustees, executors, and official persons, who often erroneously suppose that the addition of words descriptive of their official character, exempts them from personal responsibility.[6] The vocation and

[1] [Ia. Stat. 1880, sec. 1936.]

[2] [Ohio R. S. 1880, sec. 4107.]

[3] [Id., sec. 5872; McFarland *v.* Febiger, 7 Ohio, pt. 1, p. 194; see Goshorn *v.* Purcell, 11 Ohio St. 641.]

[4] [Story on Agency, sec. 148.]

[5] [Ohio R. S., sec. 4110.]

[6] [Rawle on Covenants (4th ed.), 49, 50.]

residence of the parties is seldom stated in modern deeds, and is immaterial, except where the validity of the deed depends upon the residence, as it may in Kentucky, or the name is so common as to occasion difficulty in proving the identity of the party. If the name of the grantee is omitted, the defect may be supplied by the *habendum* clause, since, under the statute of uses, he to whom the first use is limited must be the grantee.[1] Where the christian name of the grantor is expressed only by initials, or different christian names are given to him in different parts of the deed, or the wife is described as wife without giving her name, verbal evidence is admissible to show who the person was who executed the deed; but, as such irregularities occasion difficulty in proof, they should be stated in the abstract.[2] The rule, that delegated authority can not be delegated, precludes executors, trustees, and official persons from conveying by power of attorney, except in Pennsylvania, where, by statute, trustees and executors may convey by power of attorney.[3] Questions of the capacity of an unincorporated society, assuming to act under a name as if incorporated, to take and hold land, must be determined by the local law. The power of a corporation to be a grantor, or to become a grantee, is a question of the true construction of the charter.

SEC. 49. At common law, the word "heirs" is

[1] Irwin *v.* Longworth, 20 Ohio, 581.

[2] Bacon's Ab. Misnomer; Smith on Real & Per. Prop.

[3] [Brightly's Purd., p. 101, sec. 4.]

indispensable to create an estate in fee by deed. In Illinois, Iowa, and Kansas, no words of inheritance are necessary to pass a fee.[1] In all these states, there are statutes restricting the creation of estates tail, and giving to the words "heirs of the body" a meaning different from that which attaches to them at common law.

SEC. 50. A statement of the words of grant is important for two reasons: they are necessary to the validity of the deed, and they often imply covenants. The usual words, in all deeds of bargain and sale, upon which the deeds of all the states mentioned in this chapter are modeled, are "grant, bargain, and sell." Under the English statute of Anne, either of these words, in deeds conveying a fee, imply that the grantor was seized of an indefeasible estate in fee simple, free from incumbrances done or suffered by the grantor, except the rents or services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in the deed, except certain leases not material to the present purpose.[2] This statute has been, in sub-

[1] [Ills. R. S. 1880, p. 308, sec. 9; Ia. Stat. 1880, sec. 1929; Kans. Comp. L. 1881, p. 210, sec. 2; so, also, Ala. Code, 1876, sec. 2178; Ga. Code, 1873, sec. 2248; Ky. Gen. Stat. 1881, p. 585, sec. 7; Minn. R. S. 1878, p. 534, sec. 4; Neb. Comp. Stat. 1881, p. 393, sec. 49; N. Y. R. S., vol. 3, p 2205, sec. 1; Tenn. Stat. 1871, sec. 2006.]

[2] [Williams R. P., 5th Am. ed., p. 445. By the 8 and 9 Vict., c. 106, it is declared that the words "give" and "grant," in a deed between individuals, do not imply covenants. 3 Wash. R. P. 483.]

stance, re-enacted in Pennsylvania and Illinois.[1] In Kentucky, a deed of bargain and sale, a deed of release, or grant, is sufficient to transfer the possession of an owner in possession.[2] In Iowa, the words "quitclaim" or "convey" are sufficient.[3] At common law, the grant of like estates, in the same land, to two or more, by the same deed, made the grantees joint-tenants, an estate which, if continued in the same grantees until the death of one of them, gave the whole interest to the survivor. No such rule prevails in Ohio, Indiana, Illinois, Iowa, or Kansas.[4]

SEC. 51. The amount of the consideration should be stated, for the recital of it is evidence of the amount of damages which the grantee will be entitled to recover in case he is evicted by a paramount title; the nature of it should be stated, as

[1] [Brightly's Purd., p. 472, sec. 75; Ills. R. S. 1880, p. 308, sec. 8; Ala. Code, 1876, sec. 2193.]

[2] [Ky. Gen. Stat. 1881, p. 255, sec. 3.]

[3] [Ia. Stat. 1880, sec. 1970; Deed of "quitclaim," or "release," is sufficient in Ind. R. S. 1881, sec. 2924; Mich. Comp. L., 1871, p. 1342, sec. 3; Minn. Stat. 1878, p. 534, sec. 4; Wis. R. S. 1878, sec. 2207.]

[4] [Sergeant et ux. *v.* Steinberger et al., 2 Ohio, 305; Ind. R. S. 1881, sec. 2922; Ills. R. S. 1880, pp. 307, 859, secs. 1, 5; Ia. Stat. 1880, sec. 1939; Kans. Gen. Laws, 1859, p. 289; so, also, Ala. Code, 1876, sec. 2191; Col. Gen. L. 1877, sec. 160; Ga. Code, 1873, sec. 2300; Ky. Gen. Stat. 1881, p. 586, sec. 13; Mich. Comp. L. 1871, p. 1329, sec. 44; N. Y. R. S., vol. 3, p. 2179, sec. 44; Pa. Brightly's Purd., p. 815, sec. 1; Tenn. Stat. 1871, sec. 2010; Wis. R. S. 1878, sec. 2068.]

money or natural affection, that inquiry may, if necessary, be made, whether the deed is liable to be called in question as in violation of the statute against fraudulent conveyances; the recital of the payment should be stated, because its absence is notice to the grantee that the prior grantor is unpaid, and that, therefore, a lien exists upon the property to secure its payment, and, if the practice is to indorse a receipt for the purchase money on the deed, its presence or absence must be noted, since its absence is, in like manner, notice of a vendor's lien.[1] The law on this subject is more fully stated in section 57. The necessity of stating a consideration, and who paid the consideration, arises from the doctrine of equity that a conveyance not appearing to be induced by value paid by the grantee, must be assumed to have been intended to be held by the grantee in trust for the grantor, or other person who paid the consideration money. The doctrine applies to all persons, except where the grantee is the child, or other person to whom the payer has undertaken to perform the duties of a parent.[2] In Kansas, the purchase by one with the money of another, does not create any resulting trust in favor of the owner of the money.[3]

[1] 2 Story's Eq. Juris. secs. 1216–1230.

[2] [Adams' Equity, 33, 35; 2 Story's Eq. Juris., secs. 1201–1203.]

[3] [Kans. Comp. L. 1881, p. 989, sec. 6; so, also, Mich. Comp. L., p. 1331, sec. 7; Ind. R. S. 1881, sec. 2974; Ky. Gen. Stat. 1881, p. 587, sec. 19; N. Y. R. S., vol. 3, p. 2181, sec. 51.]

SEC. 52. If the premises have been accurately described in the heading of the abstract, the only care required is to note any variation from the boundaries, lines, or monuments, as therein stated. Repetition of the same matter is to be avoided, as tending to prolixity and confusion. The remarks made in section 1, with respect to the description of the premises in the contract of sale, are applicable, also, to the deed. No external evidence of intention is admissible. The only evidence that can be offered in explanation of the terms of the deed, is that which shows what property answers to the description contained in the instrument.[1] If, knowing all the facts about the property itself—paying no attention to what may have been in the mind of the parties when the deed was made—the court find the language of the description totally inapplicable to the existing facts, they must declare the deed invalid, for the simple reason that it points to no subject upon which it can operate.[2]

SEC. 53. It is not, however, to be supposed that the existence of a difficulty, or an error, in the description, where the subject can be identified from the other words of the deed, will invalidate the instrument. The parties, it must be assumed, intended to make a valid grant, and to give to the whole description its natural effect; and, therefore, to have contemplated a resort to the usual means

[1] 1 Greenleaf on Ev., sec. 287; Hildebrand *v.* Fogle, 20 Ohio, 147.

[2] 1 Greenleaf on Ev., sec. 290.

of supplying an omitted part of the description, where the deed furnishes all the data for that purpose. Thus, a grant of ten acres in the north-west corner of a section, or on the west side of a section, is, in fact, a description of a tract, in which, in one case, the two sides, the angle, and the included quantity, are given to find the two other sides, the result being a square; and, on the other, the three sides, and all the angles and quantity, are given to find the other side. But, it is evident that the deed would afford no data for computing the lines of a tract described as "ten acres in a corner" of such a section. In the absence of external evidence, which is inadmissible, it would be impossible to ascertain which of the four corners was intended; all the deed would, for that reason, be void.[1]

Sec. 54. A difficulty of an opposite kind arises from over-anxiety to identify the property, in cases where the conveyancer, not satisfied with having said enough, proceeds to incumber his description with details which are wholly unnecessary, and which turn out to be, in fact, erroneous and inapplicable. If, upon striking out the erroneous details, a descriptions which fits the property remains, the deed is good. This is a correction which every thoughtful reader applies to every error in detail which comes under his notice: he corrects it by the context. He does not mistake an error of this kind, arising from ignorance of the true qualities of the subject, for a

[1] Walsh *v.* Binger, 2 Ohio, 328.

clause intelligently and purposely inserted as a qualification of a more general description.[1]

SEC. 55. The imperfection of descriptions arising from positive error, occasions more litigation than those already stated, but the means for their correction are to be found in the plain, common sense interpretation of the deed. An error evidently exists somewhere. The questions are, where is the error? And, does the deed furnish the means for its correction? To insist upon a literal adherence to every clause in the deed, when, on comparing it with its assumed subject, it is found that there is a plain error in some clause, is to sacrifice the end of the whole document for the needless saving of one of its means. The errors alluded to are those which show a want of correspondence in the different parts of the description. The clauses do not fit together; one line is too long, one too short; one runs in a direction opposite to all the requirements of the other lines; one is so indefinitely expressed, in course or distance, as to leave the reader in doubt where it will go; or two lines which, to conform to other lines, ought to be parallel, cross each other at acute angles, like the blades of an opened pair of scissors, and include nothing. The correction of such errors depends upon very simple principles. That part of the description which fits the subject is, by that circumstance, proved to be free from error. The data begin there. An error is more easily committed in mat-

[1] 1 Greenleaf on Ev., sec. 301; Broom's Maxims, 490.

ters, requiring care and skill, which are rare, than in matter of eyesight, which is common. A call for a planted stone, a marked tree, the established line of the section known to the whole township, ought, for this reason, to be assumed to have been what was intended to mark the boundary line, rather than a line determined only by the magnetic needle, the accuracy of which is a question of skillful observation and local attraction, or by the surveyor's chain, in which there is almost an equal chance of error. Course and distance, therefore, give way, in case of disagreement, to monuments and other visible objects. No one who has handled a surveyor's compass will be surprised at the courts for construing the deed by reversing all the courses, calling north, south, and east, west, or, in the absence of all other data, rejecting words of approximation for a definite certainty, and reading northwardly due north. If, by the process of correction thus indicated, the property is identified, the deed is good. That is certain, which can be made so.[1]

Sec. 56. The declarations of trust in a deed should be copied word for word, and require the closest attention of counsel. They advise the purchaser that he is dealing with a person who has not the beneficial ownership, and who can convey to him no title, except in strict conformity with the

[1] Wolfe *v.* Scarborough, 2 Ohio St. 368; McCoy *v.* Galloway, 3 Ohio, 283; Nash *v.* Atherton, 10 Ohio, 170; Barclay *v.* Howell, 6 Peters, 511; Lipscom *v.* Grubbs, 3 Bibb, 400; Croghan *v.* Nelson, 3 Howard, 194; Wyckoff *v.* Stephenson, 14 Ohio, 19.

terms of the trust. All the risks of misinterpreting the extent of the trustee's authority, are devolved on the purchaser. These risks are of two classes: 1, that the terms of the trust do not authorize the trustee to sell at all, or not to sell except upon conditions which have not been complied with, and 2, that the receipt of the trustee for the purchase money may not be a discharge of the purchaser. With respect to the authority of the trustee to sell, the only guide is the declaration of trust. In the execution of the power, the trustee is bound to bring the estate to sale under every possible advantage to the beneficial owner. If the purchaser knows that the trustee plainly neglects his duty in this respect, he can never compel a specific execution of the agreement, and may involve himself in the consequences of a breach of trust.[1] One of these consequences is, that the beneficial owner may compel the purchaser, buyer under circumstances amounting to a breach of trust, to restore the trust property. All who concur in, or knowingly profit by, a breach of trust, are principals, equally liable to make restitution to the beneficial owner for the wrong done to him. This liability extends to all who buy with notice of the trust, and a breach of it, or who, in ignorance of the trust and its breach, have taken the property from the wrong-doer without paying value for it.[2]

[1] Turner *v.* Harvey, Jacobs, 178.

[2] Huguenin *v.* Basely, 14 Ves. 273; [2 White & Tudor's L. C., pt. 2, p. 1156; 2 Perry on Trusts, 3rd ed., sec. 790.]

SEC. 57. The second class of risks, which a purchaser buying property covered by a trust must encounter, is that the trust may be of such a character as will oblige him to be responsible that the trustee properly applies the purchase money, in accordance with the terms of the trust; in other words, that the trustee's receipt to him, on his paying the purchase money, may be no defense to a suit brought by the beneficiary against himself, to compel a second payment of the purchase money, in case the trustee should have misapplied the first payment. This obligation of the purchaser to see to the proper application of the purchase money, is deduced from the rule, that he who buys with notice of a trust, buys subject to the trust. It is a question of the intention of the creator of the trust, to be gathered from the whole instrument; and, if any doubt arises, a verbal copy of the material parts of the instrument should be set out in the abstract. An intention to make the purchaser responsible, is deemed to exist where the terms of the trust imperatively require the proceeds of the sale to be paid to a person in being, and competent to bind himself by his receipt; and where, therefore, any other use of the fund would involve a breach of trust. The obligation does not exist where an investment is directed to be made, which involves the exercise of the skill and judgment and discretion of the trustee; or, where the fund is for the use of a person not then in being, or not competent to bind himself; or, where the direction is to pay creditors generally, whose names, and the

amounts of whose debts, are not stated. In the case of a plain direction to pay the money to a person who is named, and who is competent to give his receipt for it, the purchaser may protect himself by requiring him to join in the receipt given by the trustee; and if he omits to take that precaution, he is liable; but it is manifestly impracticable for the purchaser to administer an estate, to insist on displacing the judgment of a trustee in making an investment left to the trustee's discretion, or to demand that he shall have the receipt of a person not yet born, or by law incapacitated from making any binding engagement; and in such cases, therefore, the receipt of the trustee alone must be a discharge.[1] The practical inconveniences of this doctrine are admitted, and in some states it is abrogated by statute, as in Indiana and Kansas.[2] In Kentucky, the obligation does not exist, unless expressly required by the conveyance or devise.[3] In those states where the ordinary rule of equity prevails, its effect is often obviated by an express clause in the deed of trust, exempting the purchaser from the responsibility of seeing to the application of the fund.

SEC. 58. Where rents are reserved, a statement

[1] Elliot *v.* Merryman, 1 White & Tudor's L. C. 74–120; Adam's Equity, 156; [2 Sugden V. 363*n*; 2 Story's Eq. Juris., sec. 1135;] Boos *v.* Ewing, 17 Ohio, 500.

[2] [Ind. R. S. 1881, sec. 2977; Kans. Comp. L. 1881, p. 990; see, also, Ala. Code, 1876, sec. 2197; Mich. Comp. L. 1871, p. 1333, sec. 22; N. Y. R. S., vol. 3, p. 2183, sec. 66.]

[3] [Ky. Gen. Stat. 1881, p. 837, sec. 23.]

of the amount and the times of payment should be made in the abstract, and the receipt of the landlord for the last payment of rent should be inquired for. To reservations is applied the ordinary rule, that clauses in the deed subsequent to the granting part, and inconsistent with it, are inoperative. The case is of too unfrequent occurrence to require notice here.

SEC. 59. Conditions and limitations in deeds, respect either the title of the property, or the mode of enjoying it. The qualities of estates, and the extent of the owner's right over his possessions, are determined by the law, and it is not competent for the owner to create estates which the law does not allow, nor to impose restraints which the law forbids. Thus, by law, an estate which is given to a man and his heirs, confers upon the grantee the complete and ultimate ownership, to which the law attaches, as an inseparable incident, the power to alienate it. The creation, by deed, of an estate after the grant of a fee-simple, as well as all attempts to restrain the owner of the fee from disposing of it by his voluntary act, or to exempt it from liability to seizure by creditors for the payment of his debts, is futile. To effect the latter purpose, the legal estate is sometimes vested in trustees, with directions to them to pay over the income to the beneficiary, from year to year, notwithstanding any act of insolvency or bankruptcy committed by him; or, with directions that the property shall not be liable for any debts contracted by him, nor affected by any transfer which he may make. If the terms of

the trust are such as to make the payment of the income by the trustees to the beneficiary purely discretionary, so that the latter could not sustain a bill in equity to compel the payment to him, such an arrangement might, perhaps, be sustained, on the ground that the creditors can reach only that which the beneficiary might have reached by judicial proceedings. A gift over, limited in the trust deed, to other persons, in case the beneficiary first named should become bankrupt or insolvent, is valid.[1] A grant to a widow, with a limitation over to another person, in case of her marrying again, is upheld in some states, and treated as invalid in others.[2]

SEC. 60. The purchaser may, to a certain extent, be restrained in the mode of use and enjoyment of the land conveyed to him, without any infringement of the rules of law with respect to the creation of estates; and the obligation to use the land in the mode prescribed, may be made binding on all succeeding purchasers. Such restraints are made effectual, in the courts of law, by means of covenants "running with the land," to secure the performance of which a condition is inserted in the deed, allowing the grantor to enter upon the

[1] [1 Perry on Trusts, 3rd ed., sec. 388; 2 Id., sec. 555.]

[2] Scott *v.* Tyler, 2 White & Tudor's L. C., pt. 1, p. 429, 512; [1 Story's Eq. Juris., sec. 285*n*. "The construction of the courts is, of late, certainly favorable to the upholding of gifts to women dependent in any sense upon their living apart from their husbands, or remaining unmarried, treating such condition as void." Id., sec. 281 *c* and *n*; 2 Perry on Trusts, sec. 516.]

land, in case of a breach of the covenant, and terminate the estate. The courts of equity, in analogous cases, where there is no remedy at law, afford relief, by compelling the purchaser and subsequent owners, buying with notice of the restraint, specifically to perform the thing contracted for, or to abstain from the prohibited use.[1]

SEC. 61. A covenant "running with the land," is an engagement made by the grantee, in a deed conveying land, to do something upon that land, in respect to a thing then in existence there, as part of the thing conveyed. Thus, an engagement by the tenant in the lease to keep the house let to him in repair, runs with the land; that is, the obligation to perform it becomes binding upon all the successive owners, who may acquire title to the lease through him, during the period of their successive ownership. The reader who examines the terms in which the above doctrine is stated, will correctly infer that an engagement with respect to a thing not in existence on the premises at the time, and engagements to do things upon other premises not embraced in the present deed, may be perfectly good contracts against the man who made them, but will not oblige the successive owners, who acquire his estate, to perform them. Thus, a covenant by the grantee to build a house on the land conveyed, or

[1]Adams' Equity, 152; Tulk *v.* Moxhay, 11 Beavan, 586; 2 Phillips, 774; 1 Hall & Twells, 105; Cole *v.* Sims, 5 DeGex, M. & Gor. 8; Ex parte Ralph, 1 DeGex, 209.

to repair an existing house on premises not then conveyed, will not bind the succeeding owners. The responsibility rests with the man who contracted the engagement, and does not extend to those to whom he may sell the land. For the sake of illustration, the covenants made by the grantee are stated; but the rule extends also to the covenants made by the grantor, which, but for this rule, would be deprived of nearly all their value. By its operation, the benefits of the grantor's covenant for quiet enjoyment, for indemnity against incumbrance, for further assurance, for warranty, and the like, extend not merely to the grantee himself, with whom they were made, but to all the succeeding owners who may derive their titles from or under him.[1]

SEC. 62. The restraint by means of covenants running with the land, where the burden of performance follows the ownership, is not confined to leasehold estates, but extends to estates in fee, and all lesser estates. With reference to estates in fee, a common restraint in modern times is against the erection of buildings, either generally, or of a certain height or kind, or against the carrying on of offensive trades. Such restraints are legal.[2]

SEC. 63. Such restraints are sometimes accompanied by a provision that the act prohibited may

[1] Spencer's case, 1 Smith's L. C. 137; [2 Sugden V. 237; Williams on Real Property, 397]

[2] [2 Sugden V. 266.]

not be done without the license of the grantor, either verbally given or indorsed on the lease or deed. It has been already stated in section 28, that one act of dispensation with a condition destroys the future effect of the condition. This result can be obviated only by the grantor's insisting on, and obtaining from, the grantee, a new condition restraining him for the future.

SEC. 64. If the grantor, or his heir, enters for breach of condition, and terminates the estate of the grantee, all conveyances and incumbrances made subsequent to the deed containing the condition are, so far as they affect the premises, thereby destroyed. The rights of the grantee, and of his grantees and mortgagees, in the premises, are as if they had never existed.[1]

SEC. 65. It has been stated, that, to make covenants binding on the successive owners, it is essential at law that the thing to be done shall be done upon the land conveyed, and not elsewhere. This requirement has necessitated a resort to the courts of equity, in cases where agreements have been made, upon a sale of land, for the performance of future acts by the buyer, upon other and adjacent property, as a part of the consideration of the purchase, and he has sold the land, with notice to the new purchaser of the engagement. Thus, where an owner of land in a city laid out part of

[1] Crabb on Real Prop., sec. 2195; 2 Platt on Leases, 317; [2 Wash. R. P. 12, 13.]

it into lots, and made a public square adjacent to the lots of the residue, and bound all the purchasers of the lots to keep the public square in repair, equity compelled the succeeding owners, who had bought lots with notice of the contract, to perform it, though, from what has been said in section 61, it is plain that no remedy existed at law. In like manner, if the owner of adjacent property has bound himself by contract for valuable consideration, not to use his premises so as to annoy the person with whom he contracted, equity will compel him specifically to perform it. Thus, if I contribute to the purchase of a bell for a neighboring church, upon an engagement that it shall not be rung in the mornings before six o'clock, the court will enjoin the ringing of it before that hour.[1]

SEC. 66. There are certain covenants which it was the practice of the English conveyancers to insert in deeds, and which, from that circumstance, are known as the usual covenants. As the deed of bargain and sale is almost the only English deed followed in these states, it will be sufficient to notice the covenants usually inserted in it. Where the purchaser finds unusual covenants or conditions in the preceding deeds, his counsel will take care that unusual precautions be exercised in framing the deed so as to protect him from injury. The usual covenants are, that the seller is seized in fee simple, that he has good right to convey the lands,

[1] Cases cited under section 60; Martin *v.* Nutkin, 2 Peere Williams, 266.

that they shall be quietly enjoyed by the purchaser, and that the seller will warrant the title.[1]

The claim to damages for a breach of any of the covenants relating to land, actually committed, is not transmissible with the land, but is a mere personal right of the person who was owner at the time of the breach; a right, which, on the sale of the land, remains still in him, and, on his death, goes to his administrator as a part of his personal estate.[2]

SEC. 67. The covenant of seizin was originally intended to guard the purchaser against the risks of the seller being out of possession of the land conveyed, a circumstance, which, under the statute against the granting of pretended titles, rendered the deed void. This statute has been re-enacted in Kentucky and Indiana;[3] but is not in force in Ohio, Illinois, Iowa, or Kansas.[4] It amounted to an engagement that the grantor was in possession, and not that he was rightfully in possession. Under the statute of Anne, as stated in section 50, the words "bargain," "sell," or "convey," were converted into an implied covenant of lawful seizin in fee simple.[5]

[1] [Williams on R. P. 191; 3 Wash. R. P. 447.]

[2] [Tapscott *v.* Williams, 10 Ohio, 444.]

[3] [Ky. Gen. Stat., p. 180, sec. 2; Ind. part of common law, Fite *v.* Doe, 1 Blackf. 127; so, in N. Y. R. S., vol. 3, p. 2516, sec. 6; Tenn. Stat. 1871, secs. 1776, 1777.]

[4] [Hall *v.* Ashby, 9 Ohio, 96; Ills. Stat. 1880, p. 307, sec 4; Ia. Stat. 1880, sec. 1932; Kans. Comp. L. 1881, p. 211, sec. 6.]

[5] [The covenant of seizin is held to run with the land in Indiana, Iowa, Ohio, and Wisconsin. Martin *v.* Baker, 5 Blackf.

SEC. 68. The covenant of good right to convey originated in England, in cases where the grantor, having himself no estate, but merely a power to convey, under the statute of uses, which could be effectually exercised only upon compliance with the terms of the power, desired to assure the grantee that the deed was made in the form, and under the circumstance, requisite to its validity. Its insertion in modern deeds is due rather to habit than to its practical value.

SEC. 69. The covenant for quiet enjoyment is an engagement on the part of the seller that the buyer shall not be lawfully disturbed in the enjoyment of the premises. It is not intended as a protection against vexatious litigation or lawless violence. In some states, as already mentioned, the covenant is implied from the words, "grant, bargain, or sell."

SEC. 70. *a.* Immediately following the covenant for quiet enjoyment, in English conveyances, came the covenant against incumbrances. The connection led to a mistake, which has, in some cases, completely altered the effect of the covenant. The grantor covenanted that the grantee should quietly enjoy the premises, "and *that* free and clear of all incumbrances." The conveyancer, supposing the

232; Knadler *v.* Sharp, 36 Ia. 322; Mecklem *v.* Blake, 22 Wis. 495. In Ohio, it is held that the covenant of seizin, when the covenantor is in possession and claiming title, runs with the land, but not otherwise. Backus *v.* McCoy, 3 Ohio, 211.]

word "that," which is a relative pronoun referring to the preceding covenant for quiet enjoyment, to be an adjective, supplied the imaginary ellipsis with the words, "the premises," making the covenant an engagement that the premises were free and clear, instead of an engagement, as was intended, that the grantor would indemnify the grantee against any incumbrance that might thereafter be enforced against the premises. The mistake is an unfortunate one; for it is evident that a covenant that there are no incumbrances is broken by the existence of an incumbrance at the time it is made, and that, therefore, the benefit of it is confined to the person with whom it is made; whereas, in its proper form, it runs with the land, and inures to the benefit of all the successive owners, until the incumbrance is actually enforced against one of them.[1]

Sec. 70. *b.* The covenant of warranty is either special, assuring the purchaser against the consequences of any acts theretofore done by the seller to defeat or incumber the title now granted; or general, against the acts of all persons whomsoever. In Pennsylvania,[2] a contract to give a warranty

[1] The American doctrine is, that a covenant against incumbrances does not run with the land. But in the following cases, such a covenant is held to run with the land: Hall *v.* Plaine, 14 Ohio St. 417; Foote *v.* Burnet, 10 Ohio, 333, 334; Martin *v.* Baker, 5 Blackf. (Ind.), 232; Schofield *v.* Iowa Homestead Co., 32 Iowa, 317; Rawle on Covenants for Title [4th ed., pp. 89, 333, 334].

[2] [Gratz *v.* Ewalt, 2 Binn. 95; Knepper *v.* Kurtz, 58 Penn. St. 480.]

deed implies the former; and since all titles are required to be recorded, and all secret conveyances are invalidated, as against *bona fide* purchasers for value, it must be conceded that, in the United States, a special warranty is all that the buyer ought to expect. It is supposed, however, that, in the western states, the law is otherwise, and that an agreement to give a warranty deed means a warranty against the acts of all persons whomsoever. In some of the states, an abbreviated form of warranty is prescribed by statute. Thus, in Kentucky, "he will warrant," or, "he conveys with warranty," implies a covenant of general warranty; and the expression, "he will warrant specially," or, "he conveys with special warranty," amounts to a covenant of special warranty.[1] In Iowa, the words, "I warrant the title against all persons whomsoever," or in other words, as the parties may desire, are sufficient.[2] In Indiana, the words, "warrants to (C. D.)," amount to covenants of seizin, title for quiet possession, against incumbrances, and general warranty.[3]

SEC. 71. In transferring estates dependent on the performance of conditions, or liable to forfeiture for non-payment of rent, the seller usually

[1] [Ky. Gen. Stat. 1881, p. 555, secs. 5–7.]

[2] [Ia. Stat. 1880, sec. 1970.]

[3] [Ind. R. S. 1881, sec. 2927, and Wis. R. S. 1878, sec. 2208. In New York and Minnesota, there are no implied covenants in a conveyance of land. N. Y. R. S., vol. 3, p. 2195, sec. 140; Min. R. S. 1878, p. 535, sec. 6.]

covenants with the new buyer that the conditions have been duly performed, and the rents regularly paid. In these and like cases, where the particular form of expression may determine the extent of the engagement, the covenant should be fully stated in the abstract

SEC. 72. The importance of stating in the abstract the recitals in deeds, arises from the circumstance that they are always notice to the purchaser of the facts recited, and of everything to which, if followed up by reasonable inquiry, they will naturally lead; and they may operate by way of estoppel, so as to prevent the party making them from controverting their truth. Their operation, in the way of notice, is illustrated by the case mentioned in section 38, where the fact that the patent recited an assignment by the administrator of the enterer of the land, was held to put the buyer on inquiry for the authority of the administrator to make the assignment, he having by law *prima facie* no such authority. If he had made the proper inquiry, by searching the records, he would have found that there was no authority. The recital was, therefore, notice that he had no authority. There are three conditions necessary to make a recital operate as an estoppel, precluding the covenantor from controverting the truth of it; first, a statement in the deed of a matter of fact, material to the validity of the title, or, which affects the nature and extent of the interest conveyed by the deed; second, an

agreement, expressly made or necessarily implied from the context, that the fact exists as it is stated; and, third, that the question whether the fact is as is recited, should arise in a contest between the parties to the instrument, or those claiming under them, wherein the covenantor attempts to impair the interests conveyed, by showing that the fact which he recited in the deed is incorrectly stated. Whatever the truth may be, such evidence is rejected, on the ground that it is against conscience for a man to retract a statement, deliberately made with a view for his advantage, to induce another man to change his position, and who, in reliance on the statement, has changed his position accordingly.[1]

SEC. 73. The testimonium clause includes the signing, the sealing, and the attestation of witnesses; and as these are particulars upon which the legal validity of the instrument depends, they demand special attention. The signature of a private person should be with his first christian name in full, instead of an initial. This may save the trouble of identifying him by external evidence. The omission of, or a mistake in, the middle name is unimportant, unless it is, in fact, the name by which he is chiefly known. The total omission of a christian name, the surname alone being inserted in the

[1] Best stated in Taylor on Evidence, 101; 1 Greenleaf on Ev., sec. 22; [2 Smith's L. C., 6th Am. ed., pp. 655, 673.]

deed, has been held to invalidate the instrument on the ground of its uncertainty.[1] Where the instrument is executed under the authority of a power of attorney, the signature should be in the name of the principal, "by A. B., his attorney in fact." A mistake, however, in this particular, in Ohio, in deeds, will not invalidate the instrument, if the fact of agency and the name of the principal appear from other parts of the writing.[2] The deed of a corporation, of whatever kind, must be signed in the corporate name, "by A. B., president," or other officer designated by law for that purpose.

SEC. 74. In Ohio, a private seal is not necessary to the validity of a deed.[3] In Indiana, the defect of a want of seal in deeds prior to August 17th, 1855, was cured by statute; and the act of August 6th, 1859, dispensed with private seals, whether scroll or other seals, altogether.[4] In Kentucky, Iowa, and Kansas, private seals have been abolished.[5] In

[1] Bacon's Abr. Misnomer; Smith on R. & P. P.

[2] [R. S., sec. 4110.]

[3] [Private seals are now abolished; 80 Ohio Laws, But previous to March 29, 1883, a wafer or scroll was treated as a seal, which was required. Ohio R. S. 1881, secs. 4 and 4106.]

[4] [Ind. R. S. 1881, sec. 2999.]

[5] [Ky. Gen. Stat. 1880, p. 249, sec. 2; Ia. Stat. 1880, sec. 2112; Kans. Comp. L. 1881, p. 209, sec. 6; and, also, Neb. Comp. Stat., p. 489, sec. 1; Tenn. Stat. 1871, sec. 1804; Ala. Code, 1876, secs. 2194, 2948.]

Illinois, a scroll is sufficient.[1] In Pennsylvania, a written or ink seal is good.[2]

SEC. 75. If, on the production of the original deed, there appear alterations, erasures, or interlineations, not noted in the attestation clause, the deed will not be admitted in evidence until they are satisfactorily accounted for. They cast a suspicion on the deed, which the owner is bound to clear up.[3] After a deed has been delivered, it is not competent for the grantee to add a word to it, and the better opinion is, that not even the grantor himself can fill a blank, without re-executing the deed.[4] Upon the question whether, if a deed, executed in blank, be afterward fraudulently filled up, in perversion of the intended use, and in that shape delivered to a person taking it *bona fide* for value, the grantors are bound by it, it was held in Ohio, that, though the deed, as a deed, was invalid, the grantor who had committed the fraud was estopped to deny its validity; but that the rights of

[1] [Ills. Stat. 1880, p. 303, sec. 1; and, also, Ga. Code, 1873, sec. 5; Mich. Comp. Law, 1871, p. 1348, sec. 39, and p. 1708, sec. 80; Minn. R. S. 1878, p. 538, sec. 31; Wis. R. S. 1878, sec. 2215.]

[2] 1 Dallas, 63.

[3] 1 Greenleaf Ev., sec. 564.

[4] Moore *v.* Bickham, 4 Binney, 1; 9 Cranch, 28; 11 Ad. & Ellis, 31; 6 Exch. 200, 216; 9 Cowen, 255; Hatch *v.* Searles, 2 Smales & Gifford, 147; 1 Greenleaf Ev., sec. 568. ["The rule may be taken to be, that a material alteration by a party of itself avoids the deed as to him; but an immaterial alteration does not, unless it is fraudulent." 1 Smith's L. C., pt. 2, p. 1285.]

his wife, who was innocent of the fraud, were not affected by it.[1]

SEC. 76. The proper form of the attestation of the witnesses is "signed, sealed, and delivered, in our presence." These are the three facts, which, if it is necessary to prove the due execution of the deed, the subscribing witnesses will be required to prove. The words "executed in our presence," are not, therefore, strictly proper, since they state rather a matter of law, deducible from the "signing, sealing, and delivery," than the necessary facts. There is, in Ohio, a dictum that "executed in our presence" is a sufficient attestation; and it has been decided in that state, under the statute, that "sealed and delivered in presence of" is a good attestation.[2] In that state, the attestation of the witnesses is not required to the delivery, but only to the signing and sealing.[3] A deed can not be invalidated by showing that one of the subscribing witnesses was incompetent to testify.[4] By the law of Ohio, the attestation of two witnesses is indispensable to the validity of all deeds, mortgages, and leases for a longer period than three years.[5] In Pennsylvania, Kentucky, and Ala-

[1] Conover *v.* Porter, 14 Ohio St. 450.

[2] [Fosdick, Lessee, *v.* Risk, 15 Ohio, 84; Williams *v.* Robson, 6 Ohio St. 510.]

[3] [Ohio R. S. 1880, sec. 4106. The attestation is now only required to the signing, 80 O. L. 80.]

[4] [Doe *v.* Turner, 7 Ohio, pt. 2, 216.]

[5] [Ohio R. S. 1880, sec. 4106, 80 O. L. 80.]

bama,[1] the attestation of witnesses is not necessary to the validity of a deed, as between the parties.

SEC. 77. By the rules of equity, the acceptance of a trust may be proved by the conduct of the trustee; but in all well considered deeds creating trusts, his acceptance is expressed upon the deed itself. The abstract should, therefore, note the presence or absence of an express acceptance of the trust, and the date of the acceptance.

SEC. 78. The unconscientious advantages which have been taken of formal defects in the acknowledgment of deeds, have led the legislatures of many of the states to reduce the terms of the acknowledgment to the fewest possible words, and many curative acts have been passed to remedy defects in past acknowledgments. Our limits do not allow us to do more than to mention the fact, and refer to the statutes for the details. The present law of the several states will be stated in the next chapter.

[1] [Long *v.* Ramsey, I Serg. & R. 73. In Kentucky, it is, nevertheless, valid as between the parties. Fitzhugh *v.* Croghan, 2 J. J. Marsh. 429. In Michigan, it is held that the title may pass without attestation or acknowledgment. Price *v.* Haynes, 37 Mich. 487. In Alabama, a certificate of acknowledgment is sufficient, in the absence of attestation. Sharpe *v.* Orme, 61 Ala. 263. In New York, a deed not acknowledged previous to delivery must be attested by at least one witness, or it will not be valid as against a purchaser until acknowledged. Genter *v.* Morrison, 31 Barb. 155.]

CHAPTER V.

THE ACKNOWLEDGMENT OR PROOF OF EXECUTION OF DEEDS.

79. Alabama.—80. Colorado.—81. Georgia.—82. Illinois.—83. Indiana.—84. Iowa.—85. Kansas.—86. Kentucky.—87. Michigan.—88. Minnesota.—89. Nebraska.—90. New York.—91. Ohio.—92. Pennsylvania.—93. Tennessee.—94. Wisconsin.—95. Memorandum of defects.—96. Deed of woman about to be married.—97. Powers of attorney to convey.—98. Deeds made by and to aliens

[SECTION 79. In Alabama, acknowledgments of deeds executed in the state may be taken by judges of the supreme and circuit courts, and their clerks, chancellors, registers in chancery, judges of the courts of probate, justices of the peace, and notaries public. Deeds executed out of the state, and within the United States, may be acknowledged by the judges and clerks of any Federal court, judges of any court of record in any state, notaries public, or commissioners appointed by the governor of the state. Deeds executed out of the United States may be acknowledged by a judge of any court of record, or chief magistrate of any city, town, borough, or county, notaries public, or any diplomatic, consular, or commercial, agent of the United States.[1] A deed must be either attested by witnesses or ac-

[[1]Ala Code, 1876, secs. 2155, 2156.]

knowledged. An acknowledgment dispenses with the necessity of an attestation.[1] It must be attested by at least one witness where the grantor writes his own name, and two where he can not write.[2] In the case of a conveyance of the homestead, a separate examination of the wife is required.[3]]

[SEC. 80. In Colorado, deeds executed within the state may be acknowledged before a justice of the supreme or district courts, before any clerk of such courts, or his deputy; the county judge of any county, such county judge and clerks certifying such acknowledgment under the seal of the court; before the clerk and recorder of any county, or his deputy, he certifying the same, or his deputy, under the seal of such county; before any notary public; or, before any justice of the peace within his county; but if the deed be for the conveyance of land situated beyond the county of such justice, there shall be affixed to his certificate of acknowledgment a certificate of the clerk of the proper court, under his hand and the seal of such county, to the official capacity of such justice of the peace, and that the signature to such certificate of acknowledgment is genuine.

Deeds executed out of the state, and within the United States, or any territory thereof, may be acknowledged before the secretary of any such state

[1] [Ala. Code, 1876, sec. 2146; Sharpe *v.* Orme, 61 Ala. 263.]
[2] [Id., secs. 2145, 2146.]
[3] [Id., sec. 2822.]

or territory; clerk of any court of record of the state or territory, or of the United States within such state or territory, having a seal, such clerk certifying the acknowledgment under the seal of the court; before any other officer authorized by the laws of such foreign state or territory to take and certify acknowledgments, provided there shall be affixed to the certificate of such officer a certificate by the clerk of some court of record of the county, city, or district, wherein such officer resides, under the seal of the court, that the person certifying the acknowledgment is the officer he assumes to be; that he has authority by the laws of such state or territory to take and certify such acknowledgment, and that the signature of the officer to the certificate of acknowledgment is genuine; before any commissioner of deeds for such foreign state or territory, appointed under the laws of Colorado, the commissioner certifying such acknowledgment under his hand and official seal.

Deeds executed out of the United States may be acknowledged before any court of record of any foreign republic, kingdom, empire, state, principality, or province, having a seal, the acknowledgment being certified by the judge or justice of such court to have been made before such court, and the certificate attested by the seal of the court; before the mayor or other chief officer of any city or town having a seal, and such mayor or officer certifying the same under such seal; before any consul of the United States within such foreign country,

he certifying the same under the seal of his consulate.[1]

Persons making an acknowledgment of a deed must be personally known to the officer before whom the acknowledgment is made (or proved to be such by the oath of some credible witness), and the officer shall so certify.[2]

In the mortgage of a homestead, the deed must be signed, as well as acknowledged, by the wife, separate and apart from the husband.[3]]

[SEC. 81. In Georgia, deeds executed within the state may be acknowledged before a notary public, justice of the peace, a judge or clerk of the supreme or ordinary court of record, or clerk of the superior court.

Without the state, deeds may be acknowledged before a commissioner of deeds for the State of Georgia, a judge of a court of record, the clerk of the court certifying the genuineness of the signature.

In foreign countries, deeds may be acknowledged before a commissioner of deeds for Georgia, a consul or vice-consul of the United States.[4]]

[SEC. 82. In Illinois, deeds executed within the state may be acknowledged before a master in chancery, notary public, United States commissioner, circuit or county clerk, justice of the peace,

[1] [Col. Gen. Laws, 1877, p. 136, sec. 172. By Act Feb. 6, 1879, L. 1879, p. 5, clerks of the circuit and district courts of the U. S. or their deputies, may acknowledge deeds.]

[2] [Id., p. 137, sec. 173.] [3] [Id., ch. 46, sec. 6.]

[4] [Ga. Code, 1873, sec. 2706.]

or any court of record having a seal, or any judge, justice, or clerk of any such court. When taken before a notary public or United States commissioner, the same must be attested by his official seal. When taken before a court or clerk thereof, by the seal of such court. When taken before a justice of the peace, there must be added the certificate of the county clerk, under his seal of office, that the person taking such acknowledgment was a justice of the peace in said county at the time of taking the same. If the justice of the peace resides in the county where the lands mentioned in the certificate are situated, no such certificate is required.

Deeds executed without the state may be acknowledged before a justice of the peace, notary public, United States commissioner, commissioner to take acknowledgments of deeds, mayor of a city, clerk of a county, or before any judge, justice, or clerk of the supreme or any circuit or district court of the United States, or any judge, justice, or clerk of the supreme, circuit, superior, district, county, or common pleas court of any of the United States or their territories. When taken before a justice of the peace, there must be added a certificate of the proper clerk, under the seal of his office, stating that the person before whom the acknowledgment was made was a justice of the peace at the time of making the same. Acknowledgments may also be made in conformity with the laws of the state, territory, or district where they are taken. But there must be a cer-

tificate of the clerk of a court of record within such state, territory, or district attached, that the deed is executed and acknowledged according to the laws of such state, territory, or district, or it shall so appear by the laws of such state, etc.

Acknowledgments without the United States may be made before any court of any republic, state, kingdom, or empire having a seal, or any mayor or chief officer of any city or town having a seal, or before any minister or secretary of legation or consul of the United States in any foreign country, attested by his official seal, or before any officer authorized by the laws of such foreign country to take acknowledgments; if he have a seal, such deed must be attested by the official seal of such court or officer. And, in case such acknowledgment is taken before other than a court of record or mayor or chief officer of a town having a seal, proof that the officer taking such acknowledgment was duly authorized by the laws of his country so to do must accompany the certificate of acknowledgment.[1]

Where the deed is proved before a justice of the peace out of his county, the omission of the certificate of the clerk of the court that he was a justice of the peace at the time of taking the acknowledgment will not prevent the record of the instrument from being notice.[2]

Deeds, though not acknowledged, are deemed,

[1] [Ills. R. S. 1880, p. 311, sec. 20.]
[2] [Ills. R. S., p. 313, sec. 21.]

from the time of being filed for record, notice to subsequent purchasers and creditors, but can not be read in evidence unless their execution be proved in the manner required by the rules of evidence applicable to such writings.[1]

If the grantor has not acknowledged the deed, it may be proved by the testimony of the subscribing witnesses; and, if the subscribing witnesses are dead, or not to be had, it may be proved by evidence of the hand-writing of the grantor, or at least one of the subscribing witnesses; which evidence shall consist of the testimony of two or more disinterested persons swearing to each signature.[2] A certificate of acknowledgment of a commissioner which does not show the venue where it was taken is held insufficient.[3] The defect, however, is cured by the certificate of the county clerk as to his official character.[4]]

SEC. 83. In Indiana, an acknowledgment is required to admit a deed to record.[5] The act, which took effect August 9th, 1858, makes the following form sufficient:

Before me, C. F. (a judge or justice, as the case may be), this —— day of ——, A. B. acknowledged the execution of the annexed deed (or, mortgage,

[1] [Ills. R. S., p. 316, sec. 31.]
[2] [Ills. R. S., p. 314, sec. 25.]
[3] [Hardin *v.* Kirk, 49 Ills. 153.]
[4] [Hardin *v.* Osborne, 60 Ills. 93; Martindale Law of Conveyancing, sec. 257.]
[5] [Ind. R. S. 1881, sec. 2933.]

as the case may be).[1] Married women acknowledge in the same form:[2] but, if a married woman is between eighteen and twenty-one years of age, and unites with her husband in a sale of his lands, her father, or, if he is dead, her mother, must declare before the officer that he or she believes the sale is for the benefit of the wife [and that it would be prejudicial to her and her husband to be prevented from disposing of the lands thus conveyed, which declaration, with the name of such father and mother, shall be inserted as a part of the certificate of the officer taking such acknowledgment].[3] If the deed is acknowledged out of the county in which the land lies, before an officer who has no official seal, it must be accompanied with a certificate of the clerk of the circuit court of the county, and attested by the seal of said court.[4] Deeds, etc., acknowledged out of the state, and in the United States, must either be acknowledged before an officer having a seal, and attested by his official seal, or must be certified by the clerk of any court of record of the county in which the officer receiving the acknowledgment resides, and attested by the seal of the court.[5] Acknowledgments made in foreign countries require no certificate, except the official seal of the officer taking the acknowledg-

[1] [Ind. R. S., sec. 2947.]
[2] [Id., sec. 2938.]
[3] [Id., sec. 2939.]
[4] [Id., sec. 2934.]
[5] [Id., sec. 2935.]

ment.[1] The acknowledgment of a wife is made in the same manner as though she were unmarried.[2] An acknowledgment may be made before a notary public, a judge or clerk of a court of record, auditor, recorder, mayor of a city, justice of the peace, a commissioner of Indiana, a foreign minister, United States consul, or charge d'affaires[3]

SEC. 84. In Iowa, no instrument affecting real property can be lawfully recorded, unless it has been previously acknowledged or proved.[4]

Acknowledgments may be made before some court having a seal, or some judge or clerk thereof, or some justice of the peace or notary public.[5]

Deeds executed out of the state, and within the United States, may be acknowledged before some court of record, or officer holding the seal thereof, or some commissioner of deeds for Iowa, or some notary public or justice of the peace; and, when made by a justice of the peace, a certificate under the official seal of the proper authority of the official character of the justice, and of his authority to take such acknowledgments, and of the genuineness of his signature, must accompany the certificate.[6] Deeds executed out of the United States may be acknowledged before any embassador,

[1] [Ind. R. S., sec. 2937.]
[2] [Id., sec. 2938.]
[3] [Id., sec. 2933.]
[4] [Iowa Stat. 1880, sec. 1942.]
[5] [Id., sec. 1955.]
[6] [Id., sec. 1956.]

minister, secretary of legation, consul, charge d'affaires, consular agent, or any other officer of the United States in a foreign country, who is authorized to issue certificates under the seal of the United States. They may also be acknowledged before any officer authorized by the laws of the foreign country to certify to the acknowledgments of written documents [but the certificate of acknowledgment by a foreign officer must be authenticated by one of the above named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer, shall be deemed sufficient evidence of the qualification of said officer to take acknowledgments and certify thereto, and of the genuineness of signature or seal].[1] The court or person taking the acknowledgment must indorse upon the deed a certificate setting forth the following particulars: 1. The title of the court or person before whom the acknowledgment was taken; 2. That the person making the acknowledgment was personally known to at least one of the judges of the court, or to the officer taking the acknowledgment, to be the identical person whose name is affixed to the deed as grantor, or that such identity was proved by at least one credible witness (naming him); 3. That such person acknowledged the instrument to be his voluntary act and deed.[2]

The certificate of acknowledgment must show

[1] [Iowa Stat. 1880, sec. 1957.]

[2] [Id., sec. 1958.]

the county of the notary; otherwise, it has been held to be fatally defective.[1]

[SEC. 85. In Kansas, acknowledgments of deeds executed within the state may be taken before some court having a seal, or some judge, justice, or clerk thereof, or some justice of the peace, notary public, county clerk, or register of deeds, or mayor or clerk of an incorporated city.[2]

Acknowledgments out of the state must be made before some court of record, or clerk or officer holding the seal thereof, or before some commissioner to take the acknowledgment of deeds appointed by the governor of the State of Kansas, or before some notary public, or justice of the peace, or any consul of the United States resident in any foreign country. If taken before a justice of the peace, the acknowledgment must be accompanied by a certificate of his official character, under the hand of the clerk of some court of record, to which the seal of said court must be affixed.[3] The court or officer taking the acknowledgment must indorse upon the deed a certificate, showing, in substance, the title of the court or officer before whom the acknowledgment is taken; that the person making the acknowledgment was personally known to the court or the officer taking the acknowledgment to be the same person who executed the

[1] [Willard *v.* Cramer, 36 Ia. 22.]
[2] [Kans. Comp. Laws, 1881, sec. 1032.]
[3] [Id., sec. 1033.]

instrument, and that such person duly acknowledged the execution of the same.[1] Deeds, mortgages, powers of attorney, and other instruments in writing for the conveyance or incumbrance of land situated in the state, executed, acknowledged, or proved, in any other state, or territory, or country, in conformity with the laws thereof, are as valid as though executed in this state.[2]]

[SEC. 86. In Kentucky, deeds, mortgages, etc., can not be admitted to record, unless their execution is proved before the clerk of the court of the county, by two subscribing witnesses, or by proof of one subscribing witness, who shall also prove the attestation of the other; or by proof by two witnesses that the subscribing witnesses are both dead, and also like proof of the signature of one of them, and of the grantor; or by like proof that both of the subscribing witnesses are out of the state, or that one is absent and the other is dead, and also like proof of the signature of one witness and of the grantor, or on a certificate of a clerk of a county court of this state that the same had been acknowledged or proved before him.] The latter is the usual practice.[3] Whether made by a single person, or by husband and wife, the officer simply certifies that the deed was acknowledged before him, and when it was done. The common form is:

[1] [Kans. Comp. Laws, sec. 1034.]
[2] [Id., sec. 1048.]
[3] [Ky. Gen. Stat. 1881, p. 257, sec. 15.]

Commonwealth of Kentucky, } Sct.
——— county. }

I, ———, Clerk of the county court for the county aforesaid, do hereby certify that the deed from ——— to ———, was ——— presented to me in my office by said grantor, and acknowledged by ———, to be ——— voluntary act and deed.

Given under my hand, this —— day of ——, in the year 18—.

———, Clerk.
———, D. C.

Deeds executed out of the state, and within the United States, by persons other than married women, may be admitted to record, when certified under his seal of office by the clerk of a court, mayor of a city, or his deputy, or by a notary public, or secretary of state, or commissioner of deeds, or by a judge under the seal of his court, to have been acknowledged or proved before him by the two subscribing witnesses, or, in case of their death or absence from the state, by proof by two witnesses of the signature of the grantor and of one of the subscribing witnesses. The names and residences of the witnesses so called to prove the signatures of the grantor and of the subscribing witnesses, must be stated in the certificate where a deed is proved by persons other than the subscribing witnesses.[1] If the deed is executed out of the United States, it must be certified by any foreign minister, or consul, or secretary of legation

[1] [Ky. Gen. Stat. 1881, p. 258, sec. 18.]

of the United States, or by the secretary of foreign affairs, certified under his seal of office, or the judge of a superior court of the nation where the deed shall be executed, to have been acknowledged or proved before him in the manner prescribed by law.[1] The form of acknowledgment in cases of deeds executed out of the state by husband and wife, or by the wife alone, or by the wife after the husband has first conveyed, to pass the wife's lands, is prescribed by statute; namely,

Commonwealth (or kingdom), &c.

County (or Town, or City, or Department, or Parish), of ———, &c.

I, A. B. (here give his title), do certify that this instrument of writing, from C. D., and wife, E. F. (or, from E, F., wife of C. D.), was this day produced to me by the parties [which was acknowledged by the said C. D. to be his act and deed], and the contents and effect of the instrument being explained to the said E. F., by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her act and deed, and consented that the same might be recorded.

Given under my hand and seal of office.

[SEAL.] A. B.[2]

Non-resident married women may convey by

[1] [Ky. Gen. Stat. 1881, p. 257, sec. 17.]

[2] [Gen. Stat., p. 258, sec. 21.]

power of attorney acknowledged in like manner as a deed.[1]

SEC. 87. [In Michigan, deeds executed within the state may be acknowledged before any judge or commissioner of a court of record, or before any notary public, justice of the peace, or master in chancery within the state, and the officer must indorse thereon his certificate of acknowledgment and the true date of making the same under his hand.[2]

Deeds executed in any other state, territory, or district of the United States, may be executed according to the laws of such state, territory, or district, and the execution acknowledged before any judge of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such state, territory, or district to take the acknowledgment of deeds, or before any commissioner appointed by the governor of the State of Michigan for that purpose.[3]

In cases provided for in this section (4211), unless the acknowledgment be taken before a commissioner appointed by the governor of the State of Michigan, for that purpose, the deed shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district, or of the secretary of state of the state or territory within which the acknowl-

[1] [Gen, Stat., p. 261, sec. 36.]
[2] [Mich. Comp. L. 1871, sec. 4210.]
[3] [Mich. Comp. L., sec. 4211.]

ment was taken, under the seal of his office, that the person whose name is subscribed to the certificate was at the date thereof such officer as he is represented to be; that he believes the signature of such person to be genuine, and that the deed is executed and acknowledged according to the laws of such state, territory, or district.[1]

Deeds executed in a foreign country may be executed according to the laws of that country, and acknowledged before any notary public, minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner or consul of the United States appointed to reside therein, which acknowledgment must be certified thereon by the officer taking the same, under his hand, and, if taken before a notary public, his seal of office must be affixed to the certificate.[2]

The acknowledgment of married women to any deed or other instrument affecting real property may be taken in the same manner as if she were sole. And acknowledgments of married women to deeds of conveyance taken since August 4th, 1875, in the same manner as if sole, are declared valid.[3]]

[SEC. 88. In Minnesota, deeds executed within the state may be acknowledged before a notary public, register of deeds, county auditor, justice of

[1] [Mich. Laws 1875, p. 259.]
[2] [Mich. Comp. L., sec. 4213.]
[3] [Mich. Laws, 1877, p. 50; Id 1875, p. 142.]

the peace, court commissioner, judge or clerk of the supreme, district, or probate courts.

Deeds executed out of the state may be acknowledged before the chief justice and associate justices of the Supreme Court of the United States, the judges of the District Court of the United States, the judges or justices of the supreme, superior, circuit, or other court of record, of any state, territory, or district within the United States, the clerks of the several courts above mentioned, and notaries public, justices of the peace, and commissioners appointed by the governor of the State of Minnesota for such purpose; but no acknowledgment taken by any such officer shall be valid, unless taken within some place or territory for which he shall have been elected or appointed to such office, or to which the jurisdiction of the court to which he belongs shall extend.[1] And the officer taking the acknowledgment must indorse upon the deed a certificate of such acknowledgment, and the true date thereof, and must date and sign the certificate.[2] In case of acknowledgments taken without the state, unless it is taken before a commissioner appointed by the governor of the state of Minnesota, or before a notary public, or a clerk of a court, or some other officer having a seal of office, and the certificate of acknowledgment upon such deed, with the officer's seal of office affixed thereto, there shall also be indorsed upon the deed a certificate of the clerk, or other proper officer of

[1] [Minn. R. S. 1878, p. 535, sec. 7.]

[2] [Id., sec. 8.]

a court of record of the county, district, or place within which the acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be, that he is acquainted with the handwriting of such person, and that he verily believes the signature to be genuine, provided that the certificate of the secretary of any state or territory, or his deputy, under seal, indorsed on the deed to the effect that any justice of the peace before whom the acknowledgment was taken, purports to have been taken, held, at the date of the acknowledgment, his office by appointment of the governor of such state or territory, shall be a sufficient authentication.[1]

Deeds executed in a foreign country may be executed according to the laws of such country, and acknowledged before any notary public, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, or consul of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same, under his hand, and if taken before a notary public, his seal of office must be affixed to the certificate, provided that any such deed, duly signed and sealed, with two witnesses, and acknowledged as aforesaid, shall be deemed good, whether in accordance with the laws of the foreign country or not; and pro-

[1 Minn. R. S., p. 535, sec. 9.]

vided that any deed of land in the state, executed and acknowledged in any foreign country, which shall have indorsed thereon a certificate of any minister resident, charge d'affaires, or consul, of the United States, appointed to reside therein, that such deed is executed according to the laws of such country, shall be entitled to record in the county in which such land is situated.[1]]

[SEC. 89. In Nebraska, deeds executed within the state may be acknowledged before a judge or clerk of any court, or justice of the peace, or notary public; but no officer can take any such acknowledgment or proof out of his territorial jurisdiction.[2]

Deeds executed without the state or territory must be acknowledged according to the laws of such state or territory, before any officer authorized to do so by the laws of such state or territory, or before a commissioner appointed by the governor of Nebraska for that purpose. If such acknowledgment is taken before a commissioner appointed by the governor of the state, notary public, or other officer using an official seal, the instrument is entitled to record without further authentication. Otherwise, there must be attached to it a certificate of the clerk of a court of record, or other proper certifying officer of the county, state, or district, under the seal of his office, showing the person

[1] [Minn. R. S., p. 535, sec. 10.]
[2] [Neb. Comp. Stat. 1881, p. 387, sec. 3.]

whose name is subscribed to the certificate was, at the date thereof, such officer as he is therein represented to be; that he is well acquainted with the handwriting of such officer; that he believes the signature to be genuine, and that the deed is executed and acknowledged according to the laws of such state or territory.

Deeds executed in a foreign country may be executed according to the laws of such country, and the execution may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, commercial agent, or consul of the United States, appointed to reside therein, which acknowledgement shall be certified thereon by the officer taking the same, under his hand; and if taken before a notary public, his seal of office shall be affixed to such certificate.[1]]

[SEC. 90. In New York, deeds executed within the state may be acknowledged before the justices of the Supreme court, judges of the county courts, mayors and recorders of cities, or commissioners of deeds, justices of the peace in towns, notaries public, surrogates, justices of the marine court and the district courts in New York City, the judge of the court of arbitration in New York City, clerk of the city court of Brooklyn, justices of the justices' courts in the city of Troy and county of Albany, or justices of the superior court of the city of Buffalo, chancellors, circuit judges, judges of the supreme

[1] [Neb. Comp. Stat., p. 388, secs. 4, 5, 6.]

court commission; but no county judge, or commissioner of deeds for a county or city, shall take any such acknowledgment out of the city or county for which he was appointed. Deeds executed without the state may be acknowledged before the judges of the United States courts, or of the supreme, circuit, or superior court of any state or territory; before the mayor of any city, or a New York commissioner; or, before any officer authorized by the laws of the place of execution to take acknowledgments of deeds. There must be a certificate of a clerk, register, recorder, or prothonotary of the county, or clerk of the court thereof, having a seal, stating that such officer was duly authorized to make the same; that he is acquainted with the handwriting of such officer, and believes the signature to be genuine.[1]

No separate examination of a married woman is required, resident or non-resident.[2]]

SEC. 91. In Ohio, every instrument required by law to be recorded must, in addition to the attestation by two witnesses, be acknowledged by the grantors, if made in the state, before a judge of a

[1][N. Y. R. S., vol. 3, p. 2216. Deeds executed without the United States, may be acknowledged before any minister plenipotentiary, or any minister extraordinary, or any chargé d' affaires of the United States; in France and Russia, before the United States consul; in Great Britain and Ireland, before the mayor of the city of London, mayor of Dublin, provost or chief magistrate of Edinburgh, mayor of Liverpool, or United States consul at London.]

[2][Id., pp. 2218, 2233, L. 1880, ch. 300, p. 170.]

court of record in the state, or a clerk thereof, a county surveyor, a justice of the peace, notary public, or the mayor or other presiding officer of a municipal corporation, who must certify the acknowledgment on the same sheet on which the instrument is written or printed, and subscribe his name thereto.[1]

Deeds of lands situated within the state may be acknowledged out of the state before a commissioner, appointed by the governor of Ohio for that purpose, or a consul of the United States, resident in any foreign country; and all deeds, mortgages, powers of attorney, and other instruments of writing for the conveyance or incumbrance of lands situated within the state, executed and acknowledged in any other state, territory, or country in conformity with the laws thereof, or in conformity with the laws of Ohio, are as valid as if executed in Ohio.[2] No official seal need be affixed, though the officer has an official seal.[3] In case of deeds made by husband and wife, the officer, in addition to the certificate above stated, is required to certify that he examined the wife separate and apart from her husband, and read, or otherwise made known to her, the contents of the deed, and, upon such separate acknowledgment, she declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith.[4] If the

[1] [Ohio R. S. 1880, sec. 4106; 80 O. L., p. 80.]
[2] [Ohio R. S., sec. 4111.]
[3] [Fund Commissioners, etc., *v.* Glass et al., 17 Ohio, 542.]
[4] [Ohio R. S., sec. 4107; 80 O. L, p. 80.]

deed is on more than one sheet of paper, or if the acknowledgment is on a separate sheet of paper, the instrument may be corrected either by decree or by voluntary act of the parties, so as to relate back to the time of the filing in the recorder's office.[1]

"The statute seems to require: 1. A joint acknowledgment by husband and wife of the deed. 2. An examination of her by the officer, in the absence of her husband, at which time the officer taking the acknowledgment is required to read or make known to her the contents of the deed. 3. A declaration from her to the officer, upon such separate examination, that she *did* voluntarily sign, seal, and acknowledge the deed. 4. And, *instar omnium*, the further declaration upon such separate examination, that she *is* still satisfied therewith. 5. And, lastly, that all these facts should *substantially* appear in the certificate of the officer."[2]

SEC. 92. In Pennsylvania, deeds executed within the state, may be acknowledged before a justice of the peace, or before one of the judges of the supreme court or court of common pleas of the county where the land lies.[3] When made by hus-

[1] [Id., sec. 4149.]

[2] [Ward's Heirs *v.* McIntosh, 12 Ohio St. 242. Under this act, Feb. 22, 1831, it is not essential that the acknowledgments of both husband and wife should be taken at the same time. Ludlow *v.* O'Neil, 29 O. S. 181.]

[3] [Also notaries public, recorders of deeds, mayor, recorder, and aldermen of Carbondale, Philadelphia, Pittsburg, and

band and wife, the certificate of acknowledgment must state that the wife was examined separate and apart from her husband; that the officer read, or otherwise made known, the full contents thereof to the wife, and that she declared that she voluntarily, and of her own free will and accord, sealed, and as her free act and deed delivered said deed, without any coercion or compulsion of her husband.[1] The wife may revoke the deed at any time before its delivery to the grantee. Deeds made out of the state, and within any of the United States, may be recorded, if the acknowledgment is taken in due form before any officer or magistrate of the state wherein the deed is executed, authorized by the laws of such state to take acknowledgments of deeds.[2] Deeds made out of the state may also be acknowledged or proved before any judge of the Supreme Court of the United States, judge of any district court of the United States, judge of the supreme, superior court, or court of common pleas, judge of any court of probate, of court of record of any state or territory in the United States, certified under the hand of the judge and seal of the court; before any con-

Scranton; mayor and aldermen of Allegheny and Lockhaven, and mayor and recorder of Williamsport. Brightly's Purd., pp. 463–465.]

[1] [Brightly's Purd., p. 460, sec. 13; Watson *v.* Bailey, 1 Binn. 480.]

[2] [Leland's App., 13 Penn. St. 85. As proof of authority, the certificate of the clerk or prothonotary of a court of record of the state, under the seal of the court, that the officer taking the acknowledgment is duly qualified to take the same, is required. Brightly's Purd., pp. 463–465.]

sul or vice-consul, embassadors, and other public ministers; before notaries public and commissioners appointed by the governor of Pennsylvania; or before any mayor or chief magistrate, or officer of the cities, towns, or places where such deed shall be made or executed, and accordingly certified under the common or public seal of the cities, towns, or places where the deed is proved. Powers of attorney may be acknowledged or proved in the same manner; but, in Pennsylvania, powers of attorney can not be proved before a notary public.[1]

[SEC. 93. In Tennessee, deeds executed within the state may be acknowledged before a notary public, and the clerks of the county court or their deputies.[2]

If made out of the state, they may be acknowledged before a commissioner of deeds for Tennessee, notary public, any court of record or clerk thereof.[3] Deeds made out of the United States may be acknowledged before a commissioner of Tennessee, a notary public, consul, minister, or embassador, of the United States.[4] The certificate must be under the official seal of the officer. If made before a court of record, a copy of the record must be certified by the clerk, under his seal; and if before a clerk, there must be a certificate as to his official character by the presiding judge.[5]]

[1] [Griffith *v.* Black, 10 S. & R. 162.]
[2] [Tenn. Stat. 1871, sec. 2039 and *a*.]
[3] [Id., sec. 2040.]
[4] [Id., sec. 2041.]
[5] [Id., secs. 2045, 2046.]

[SEC. 94. In Wisconsin, acknowledgments of deeds executed within the state may be taken before any judge or clerk of a court of record, court commissioner, county clerk, notary public, or justice of the peace. The officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand.[1] Such certificate of acknowledgment shall be sufficient, if made in the following form:

State of Wisconsin, } ss.
——— county, }

Personally came before me, —— day of ——, 18—, the above (or, within) named A. B., and C. D., his wife (or, if an officer, adding the name of his office), to me known to be the persons who executed the foregoing (or, within) instrument and acknowledged the same. ——— ———.[2]

(Insert name of officer.)

If any such conveyance is executed in any other state, territory, or district of the United States, it may be executed in the manner and acknowledged in the form above given, or according to the laws of such state, territory, or district, and the execution may be acknowledged before any judge or clerk of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such state to take acknowledgments of deeds, or before any commissioner

[1] [WIS. R. S. 1878, sec. 2216.]
[2] [Id., sec. 2217.]

appointed by the governor of the State of Wisconsin; and if executed within the jurisdiction of any military post of the United States, not within the state, it may be acknowledged before the commanding officer thereof;[1] otherwise a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is represented to be, and that he believes the signature of such person subscribed thereto to be genuine, must be attached; and if the deed is executed and acknowledged according to the laws of such state, territory, or district, the certificate must state that fact. If any such deed is acknowledged before any commissioner, clerk of a court of record, notary public, or commanding officer of a military post, which is executed according to the laws of such state, or territory, or district, the certificate of acknowledgment must certify that fact.[2]

Deeds executed in a foreign country may be executed and acknowledged as prescribed in section 2216, or according to the laws of such country, and the execution may be acknowledged before any notary public, or other officer authorized by the laws of such country to take the acknowledgment of deeds therein, or before any minister plenipotentiary, minister extraordinary, charge

[1] [Wis. R. S. 1878, sec. 2218.]
[2] [Id., sec. 2219.]

d'affaires, commissioner, or consul of the United States, appointed to reside therein; such acknowledgment must be certified by the officer taking the same, under his hand. If taken before a notary public, his seal of office must be affixed thereto, and if such deed be executed and acknowledged according to the laws of such country, the certificate of acknowledgment must certify that fact.

A married woman of full age, residing in the state or elsewhere, may, by joint or separate deed, convey her lands in the state; or, by joint or separate deed of conveyance or quitclaim, release her dower, in the same manner as if she were unmarried;[1] and may bar her dower by joining with her husband, in the same manner as if she were sole.[2]]

SEC. 95. At the end of the abstract of each deed, a separate memorandum should be made, stating any defect or matter of doubt that appears. It calls the attention of the reader to it, while the facts are immediately before him, and does not require him, as a note at the end of the abstract would, to turn back and review the abstract anew.

SEC. 96. If an unmarried woman is about to execute a conveyance creating trusts in her favor, shortly before an intended marriage, it is prudent to require the intended husband to unite with her in the deed; for no such conveyance, clandestinely made, will be valid as against him.[3]

[1] [Wis. R. S., sec. 2221.]

[2] [Id., sec. 2222.]

[3] Bell on Husband and Wife, 3; 1 Story's Eq. Juris., sec. 273; Hill on Trustees, 163.

SEC. 97. Powers of attorney to convey lands must be by deed. In all the states, they require the same solemnities as deeds, and are recorded in the same manner. The rule of the common law that the death of the principal, whether known or unknown to the agent, terminates the authority of an agent acting under a power of attorney,[1] is, in Pennsylvania, abrogated by statute. In that state, the authority of the agent does not cease until he receives notice of his principal's death.[2]

SEC. 98. By the common law, aliens can not acquire or hold land. In many of the states, this rule is abolished by statute.[3]

In Indiana, an alien can not hold land unless he is a *bona fide* resident of the United States.[4]

In New York, when an alien makes an affirmation in writing before an officer that he is a resident, and intends always to reside in the United States, and become a citizen as soon as he is naturalized, he is entitled to take and hold real estate, and may, within six years thereafter, sell, assign, or mortgage it, but has not power to lease or demise

[1] Story on Agency, sec. 488; Easton *v.* Ellis, 1 Handy, 70.

[2] [Brightly's Purd, p. 101, sec. 3.]

[3] [Ala. Code, 1876, sec. 2860; Col. Gen. Laws, 1877, p. 90, sec. 15; Ga. Acts, 1875, p. 21; Ills. R. S. 1880, p. 95, sec. 1; Ia. Stat. 1880, sec. 1908; Kans. Comp. L. 1881, p. 51, sec. 17; Ky. Gen. Stat. 1881, p. 861, sec. 1; Minn. R. S. 1878, p. 820, sec. 41; Ohio R St., sec. 4173; Neb. Comp. Stat. 1881, p. 17, sec. 25, Const.; Tenn. Acts, 1875, p. 4; Wis. R. S., sec. 2200.]

[4] [Ind. R. S. 1881, sec. 2915.]

it until he becomes naturalized.[1] The affirmation must be certified and recorded. Such alien is not capable of taking or holding any lands which may have descended or been devised or conveyed to him previous to having become such resident or made such affirmation.[2]]

[1] [N. Y. R. S. 1881, vol. 3, p. 2164, sec. 16.]
[2] [N. Y. R. S., vol. 3, p. 2164, sec. 17.]

CHAPTER VI.

OF THE SEARCH FOR LIENS AND ABSTRACTING THEM.

99. General nature of liens.—100. Liens in favor of United States.—101. Liens in Alabama.—102. Liens in Colorado.—103. Liens in Georgia.—104. Liens in Illinois.—105. Liens in Indiana.—106. Liens in Iowa.—107. Liens in Kansas.—108. Liens in Kentucky.—109. Liens in Michigan.—110. Liens in Minnesota.—111. Liens in Nebraska.—112. Liens in New York.—113. Liens in Ohio.—114. Liens in Pennsylvania.—115. Liens in Tennessee.—116. Liens in Wisconsin.

SEC. 99. Liens are created upon lands, either by the express declaration of the legislature, to secure debts due to the state, as in the case of taxes and other debts due on public account; or, in consequence of the law raising estates in favor of the husband or the wife, as an incident of marriage, as curtesy and dower; or, by the acts of courts adjudging that the lands of the defendant be taken in execution, or be subjected to a charge; or, in consequence of the voluntary act of the parties in making leases, granting mortgages, estates for life, and the like. These liens being almost universally regulated by the statutes of the particular states, in which the lands lie, it will be convenient to consider them as they exist in the several states.

SEC. 100. 1. Warrants of distress levied under

the act of May 15th, 1820, are liens on the lands of any officer receiving money for the government, and his sureties, from the date of a levy and of the record thereof in the office of the clerk of the district court of the proper district.[1]

[2. The internal revenue tax is a first lien on spirits distilled, distillers' fixtures, and the lot of land on which they stand, or any building thereon.[2]

3. When persons liable to pay any taxes neglect or refuse to pay the same, after demand, the amounts shall be a lien in favor of the United States from the time they were due until paid, with the interest, penalties, and costs that may accrue, upon the property of such persons.[3]

4. In proceedings to subject real estate for neglect to pay taxes, the commissioner of internal revenue may direct a bill in chancery to be filed in the district or circuit court of the United States, to enforce the lien of the United States for taxes upon any real estate owned by the delinquent.[4]

5. Judgments and decrees rendered in the circuit or district court within any state, cease to be liens on real estate and chattels real in the same manner and at like periods as judgments and decrees of the courts of the state cease, by law, to be liens thereon.[5]

[1] [U. S. R. S. 18. , sec. 3629; 5 U. S. Stat. 593.]
[2] [U. S. R. S., sec. 3251.]
[3] [Id., sec. 3186.]
[4] [Id., sec. 3207.]
[5] [Id , sec. 967.]

6. When a suit is removed from a state to a United States court, attachments, injunctions, and indemnity bonds remain in full force.[1]]

ALABAMA.

[SEC. 101. 1. Taxes due the state are a lien upon the real and personal estate of persons within the county in which the assessments are made from the first of January.[2]

2. *Official bonds.*—The bonds of the judge of the probate court, county court, sheriff, clerks of the circuit and city courts, tax collector, tax assessor, and county treasurer, are liens on the property of the officers giving the same from the date of their execution.[3]

3. *Dower.*—In Alabama, dower is an estate for life of the widow in the lands of her husband to which she has not relinquished her right during marriage: 1. Of all lands of which the husband was seized in fee during the marriage. 2. Of all lands of which another was seized in fee to his use. 3. Of all lands to which, at the time of his death, he had a perfect equity, having paid all the purchase money thereon.[4]

When the husband dies, leaving no lineal descendants, and his estate is not insolvent, his widow is entitled to be endowed of one-half of his lands. If, in such case, his estate is insolvent, to one-third

[1] [U. S. R. S., sec. 646.]
[2] [Ala. Code 1876, sec. 375.]
[3] [Id., secs. 164, 167.]
[4] [Id., sec. 2232.]

part thereof; and, when there are lineal descendants, then to one-third part thereof, whether the estate is insolvent or not.[1]

If any married woman, having a separate estate, survives her husband, and such separate estate, exclusive of the rents, income, and profits, is equal to or greater in value than her dower interest and distributive share in her husband's estate, estimating her dower interest in his lands at seven years' rent of such interest, she will not be entitled to dower.[2] But, if her separate estate is less in value than her dower, as ascertained by the above rule, so much must be allowed her as that her separate estate would be equal to her dower, if she had no separate estate.[3]

Dower is relinquished by the wife joining with the husband in a conveyance of land in the presence of two witnesses, who must attest the same; or, subsequent to such conveyance by the husband, by an instrument in writing releasing her right of dower, executed by her in the presence of two witnesses, and attested by them, or acknowledged as in any other conveyance.[4]

4. *Curtesy.*—If a married woman, having a separate estate, dies intestate leaving a husband, he is entitled to one-half of the personalty of such

[1] [Ala. Code 1876, sec. 2233.]
[2] [Id., sec. 2715.]
[3] [Id. sec. 2716.]
[4] [Id., sec. 2234.]

separate estate, and the use of the realty during his life.[1]

The separate estate of the wife vests in the husband as her trustee, who has the right to manage and control it, and is not required to account with the wife, her heirs, or legal representatives for the rents and profits thereof. But such rents and profits are not subject to the payment of his debts.[2]

The husband is not liable for the antenuptial debts of the wife.[3]

5. *Judgments and executions.*—When an execution has been issued within one year after the rendition of a judgment, and returned unsatisfied, another execution may be issued at any time within ten years without a revival of the judgment.[4] But no execution can issue on a judgment or decree of a circuit, chancery, or probate court, on which an execution has not been issued within one year after its rendition, until the same has been revived by *scire facias*, if the defendant is a resident, calling on him to show cause why the plaintiff should not have execution on his judgment or decree, and, when the defendant is a non-resident, plaintiff must make affidavit of such non-residence, that the decree is unsatisfied, and cause publication to be made once a week, for three successive

[1] [Ala. Code, sec. 2714.]
[2] [Id., sec. 2706.]
[3] [Id., sec. 2704.]
[4] [Id., sec. 3173.]

weeks, in some newspaper published in the county, calling on the defendant to show cause why plaintiff should not have execution on his judgment or decree. If ten years elapse from the rendition of the judgment without the issue of an execution, or if ten years have elapsed since the date of the last execution, the judgment must be presumed to be satisfied.[1]

A writ of *fieri facias* is a lien only within the county in which it is received by the officer on the lands which continues as long as the writ is regularly issued and delivered to the sheriff without the lapse of a term.[2]

If an entire term elapses between the return of an execution and the issuing of an *alias*, the lien created by the delivery of the first execution is lost; but, if an *alias* is issued before the lapse of an entire term, and delivered to the sheriff before the sale of the property under a junior execution, the lien created by the delivery of the first execution is preferred.[3]

The lien is destroyed by *supersedeas*, injunction, or appeal.[4]

A writ of *fieri facias* issued and received by the sheriff during the life of the defendant, may be levied after his decease, or an *alias* may be issued and levied if there has not been the lapse of an en-

[1] [Ala. Code, sec. 3174.]
[2] [Id., sec. 3210.]
[3] [Id., sec. 3211.]
[4] [Id., sec. 3212.]

tire term, so as to destroy the lien originally created.[1]

No *scire facias* can issue to revive a judgment, after the lapse of twenty years from its rendition.[2]

Executions issued on decrees of the chancery court are liens from their delivery to the officer on the real estate, in the same manner as executions in the courts of law.[3]

Executions issued by justices are a lien from the time of the levy.[4]

If more than one comes to the hands of the constable, at different times, the first received must be the first satisfied; if at the same time, they must be ratably proportioned.[5]

6. *Judicial proceedings; attachments.*—The lien of attachment dates from the time of levy or service of garnishment. The rule is the same at law[6] and in chancery,[7] as well as in justices' courts.[8]

7. *Landlord's lien.*—The landlord has a lien on the growing crop of the tenant for rent, and for advances in money made for the support of his family, and the cultivation of the ground.[9]

8. *Purchase money liens.*—This lien exists in this

[1] [Ala. Code, sec. 3213.]
[2] [Id., sec. 3175.]
[3] [Id., sec. 3898.]
[4] [Id., sec. 3649.]
[5] [Id., sec. 3650.]
[6] [Id., sec. 3280.]
[7] [Id., sec. 3851.]
[8] [Id., sec. 3683.]
[9] [Id., sec. 3467; Acts. 1878–9, p. 72.]

state,[1] and, by statute, is extended to the transferee of the vendor of land, without regard to the liability of the vendor.[2]

9. *Mortgages.*—Mortgages and instruments in the nature of mortgages to secure debts created at the date thereof, must be recorded within three months from date.[3] Mortgages are canceled by entry of satisfaction on the margin.[4] There may be satisfaction of part payment so entered.[5] Mortgages, deeds of trust, or other instruments to secure the payment of pre-existing debts, are void as to creditors of the grantor when they are required to make any release, or to do any act impairing their existing rights before receiving the securities therein provided.[6]

Where real estate is sold under execution, mortgage, or deed of trust, or power of sale in a mortgage, or by virtue of any decree in chancery, the same may be redeemed by the debtor from the purchaser within two years thereafter.[7]

10. *Leases.*—Leases for more than one year must be in writing.[8]

School lands may be leased for a term not exceeding five years.[9]

[1] [Burns *v.* Taylor, 23 Ala. 255.]
[2] [Acts 1878–9, p. 171.]
[3] [Ala. Code, sec. 2166.]
[4] [Id., sec. 2222.]
[5] [Acts 1878–9, p. 102.]
[6] [Ala. Code, sec. 2125.]
[7] [Id., sec. 2877.]
[8] [Id., sec. 2121.]
[9] [Id., sec. 968.]

No leasehold can be created for a longer period than twenty years.[1]

11. *Mechanics' liens.*—To create the liens of mechanics every original contractor must file his claim, within six months, with the judge of the probate court of the county in which the property is situated, every journeyman and laborer must file his claim within thirty days, and all other persons within four months after the accrual of the indebtedness. If the claim belongs to a laborer, subcontractor, or material man, the lien shall be only to the extent of the unpaid balance in the owner's hands after notice of the same.[2]

The lien is lost if an action is not commenced within ninety days after filing the lien.[3]

Persons, other than original contractors, who wish to avail themselves of the benefit of the mechanics' lien laws, must give ten days' notice, before filing their claims, to the owner or his agent.

Agricultural laborers and superintendents of plantations have liens on the same for their labor, which continue for six months.[4]]

COLORADO.

[SEC. 102. 1. Taxes are levied for the fiscal year ending November 30th, and are a perpetual lien on real estate until paid.[5]

[1] [Ala. Code, sec. 2190.]
[2] [Id , sec. 3444.]
[3] [Id., sec. 3454.]
[4] [Id., secs. 3457, 3482.]
[5] [Col. Gen. Laws, 1877, sec. 2336.]

2. *Dower and curtesy.*—Dower and tenancy by the curtesy are abolished, the widow being entitled to one-half of the estate of the husband. The husband is entitled to the same share in the wife's estate.[1]

3. *Judgments and executions.*—Judgments are a lien on real estate for six years from their entry, but execution must be issued within one year therefrom; and where a party has been restrained by injunction, that time is not considered as any part of the six years.[2] Executions may be issued to any county by the party in whose favor judgment is obtained.[3]

4. *Mortgages.*—Mortgages are notice from the time of being filed for record, though not acknowledged or proved according to law, but can not be read as evidence unless subsequently acknowledged or proved according to law, or unless their execution be otherwise proved, in the manner required by the rules of evidence.[4]

Mortgages are canceled by an entry of satisfaction or receipt on the mortgage or margin of record of the mortgage.[5]

Lands may be redeemed within six months from sale by defendant, his heirs, executors, administrators, or grantees.[6]

5. *Leases.*—Contracts of lease for more than one year are void, unless in writing.[7]

[1] [Col. Gen. Laws, 1877, sec. 882.]
[2] [Gen. Laws, sec. 1409; Laws, 1879, p. 223, sec. 16.]
[3] [Id., sec. 1413.]
[4] [Id., sec. 178.]
[5] [Id., secs. 1847, 1849; L. 1879, p. 49.]
[6] [Id., sec. 1419.]
[7] [Id., sec. 1258.]

6. *Mechanics' liens.*—Persons performing labor or furnishing material by contract, express or implied, with another or his agent, to the amount of not less than $25, on or for any structure upon his land, have a lien upon the land and structure to the extent of the ownership at the time of the commencement of the work, etc. Claims must be filed in the office of the clerk and recorder of the county where the land is situated within forty days after the last of the labor is performed or material furnished, when they become a lien upon the land. Subcontractors and laborers must serve upon the owner or his agent, or, where there is no agent, must post in a conspicuous place on the structure, a notice of their claim.[1]

Subcontractors, mechanics, etc., have liens for work done and material furnished in constructing railroads, toll roads, mines, aqueducts, canals, etc., by service of notice on the owner or agent, or posting the same.

The liens referred to, as well as those above stated, continue for six months, unless an action is commenced within that time, and relate back to the commencement of the work, etc. They have priority over unrecorded incumbrances, or other unrecorded liens previously created.[2] Surveyors have a like lien for surveying and platting mines.[3] So, also, assignees of claims.[4]]

[1] [Col. Laws, 1881, pp. 168–176.]
[2] [Gen. Laws, 1881, p. 171.]
[3] [Id., p. 175, sec. 16.]
[4] [Id., sec. 15.]

GEORGIA.

[SEC. 103. 1. Taxes are a first lien on the real estate.[1] All deeds of gift, mortgages, sales, and assignments of property, made to avoid the payment of taxes, or judgments procured to be rendered for the same purpose, are void.[2] The person to whom the property is conveyed is liable for taxes.[3]

2. *Dower.*—Dower is the right of the wife to the estate for life in one-third of the land, according to valuation, including the dwelling-house (which is not to be valued, unless in a town or city), of which the husband was seized at the time of his death, or to which the husband obtained title in right of his wife.[4]

All of the property of the wife, had at the time of her marriage, is her separate estate; and all property given to, inherited, or acquired, belongs to the wife, and can not be made liable for the debt, default, or contract of the husband.[5]

No lien created by the husband in his lifetime, though assented to by the wife, can in any manner interfere with her right of dower.[6] The widow of a vendee of land is not entitled to dower until the purchase money is paid, as against the vendor.[7]

Dower is barred by a provision made prior to

[1] [Ga. Code, 1873, sec. 1973.]
[2] [Id., sec. 813.]
[3] [Id., sec. 814.]
[4] [Id., sec. 1763.]
[5] [Id., sec. 1754; Sup., sec. 567.]
[6] [Id., sec. 1769.]
[7] [Act 1875, p. 100; Sup., sec. 326.]

marriage, and accepted by the wife in lieu thereof; by a provision made by deed or will, and accepted by the wife after the husband's death, expressly in lieu of dower, or where the intention of the husband is plain that it shall be in lieu of dower; by an election of the widow, within twelve months from the grant of letters of administration on the husband's estate, to take a child's part of the real estate in lieu of dower; by a failure to apply for dower for seven years from the death of the husband; by the wife's deed with her husband to land to which the title came through her; by the adultery of the wife, unpardoned by the husband.[1] If the husband, by will, gives to his wife an interest in his land, her election of dower bars her of that devise, but does not deprive her of any interest in the personalty, unless it is expressed to be in lieu of dower.[2]

But the election of the widow to take a child's part of the real estate, in ignorance of the condition of the estate, will not bar her right to dower, provided the rights of third persons, acting *bona fide* upon her election, are not prejudiced.[3]

3. *Curtesy.*—Upon the death of the wife, the husband is her sole heir; and, upon payment of her individual debts, may take possession thereof without administration. When there are children surviving, and she leaves a separate estate, it will be

[1] [Ga. Code, sec. 1764.]
[2] [Id., sec. 1765.]
[3] [Id., sec. 1766.]

divided equally, share and share alike, between the husband and children or their descendants, the children taking *per capita*, and their descendants *per stirpes*.[1]

4. *Judgments and executions.*—Judgments are liens on the real estate for seven years after their rendition, or seven years after the last entry upon an execution. Judgments may be revived by *scire facias*, or action of debt, within three years from the time they become dormant.[2]

Judgments rendered at the same term of court are held to be of equal date, and no execution issued thereon is entitled to preference by being first placed in the hands of the officer.[3]

Judgments of the superior court taken to the supreme court and affirmed, lose no lien or priority by the proceedings of the supreme court, but take effect from their rendition in the court below.[4]

Judgments obtained in the superior, justices', or other courts of the state, are of equal dignity, and bind all the property of the defendant from their date.[5]

Decrees in chancery have a like lien as judgments at law,[6] and may be revived upon petition and notice, without a bill or writ of *scire facias*.[7]

[1] [Ga. Code, sec. 1761.]
[2] [Id., secs. 2914, 3604.]
[3] [Id., sec. 3578.]
[4] [Id., sec. 3579.]
[5] [Id., sec. 3580.]
[6] [Id., sec. 4217.]
[7] [Id., sec. 4219.]

A judgment on conviction in criminal cases, carries a lien for costs on the property of the criminal from the date of the arrest.[1]

5. *Judicial proceedings.*—The lien of attachments is created by the levy, and not the judgment. In case of a conflict between attachments, the first levied is the first satisfied; but between attachments and ordinary judgments or suits, it is the judgment, and not the levy, which fixes the lien.[2]

6. *Purchase money liens.*—The vendor's lien for purchase money is abolished in this state;[3] but the vendor may attach land for the purchase money, and the lien of the judgment on the attachment is exclusive of any other attachment.[4]

Official bonds.—The state has a lien on the property of the treasurer, and of his sureties, on the filing of his bond in the office of the secretary of state.[5]

7. *Growing crops.*—Landlords have a special lien for rent on crops, superior to all other liens, except for taxes, and also a general lien on the property of the debtor liable to levy and sale, and such general lien dates from the time of the levy of the distress warrant.[6]

8. *Mortgage.*—No particular form is necessary to constitute a mortgage. It must be executed in the

[1] [Ga. Code, sec. 4699.]
[2] [Id., sec. 3331.]
[3] [Id., sec. 1997.]
[4] [Id., sec. 3292.]
[5] [Act 1876, p. 127.]
[6] [Ga. Code, sec. 1977.]

presence of, and attested or proved before, a notary public, or justice of any court in the state, or a clerk of the superior court (and, in case of real property, by one other witness), and recorded within thirty days from date.[1] Mortgages not recorded within the time required, remain valid as against the mortgagor, but are postponed to all other liens created or purchases made prior to the actual record of the mortgage. Notice of a prior unrecorded mortgage will postpone a younger mortgage.[2]

A mortgage recorded in an improper office, or without due attestation, or so defectively recorded as not to give notice to a prudent inquirer, is not held to be notice to subsequent *bona fide* purchasers or younger lienors.[3]

The due record of a mortgage, though not made in the prescribed time, is notice from the time of record to all the world.[4] A lien is created in this state by a deposit of title deeds, which amounts to an equitable mortgage.[5]

9. *Lease.*—The relation of landlord and tenant exists when the owner of real estate grants to another the right to possess and enjoy the use of the same, either for a fixed time, or at the will of the grantor. In such case, no estate passes out of the landlord, and the tenant has only the usufruct, which he can not convey except by the landlord's

[1] [Act 1876, p. 34; Sup., sec. 334.]
[2] [Ga. Code, sec. 1957.]
[3] [Id., sec. 1959.]
[4] [Id., sec. 1960.]
[5] [Id.; Mounce *v.* Byars, 16 Ga. 469.]

consent, and which is not subject to levy and sale; and all renting or leasing of such real estate for a period of time less than five years, is held to convey only the right to possess and enjoy such real estate, unless the contrary be agreed upon by the parties to the contract, and so stated therein.[1]

10. *Mechanics' liens.*—Mechanics, contractors, material men, machinists, manufacturers of machinery, including corporations engaged in such business, have a lien on the buildings, etc., for work done and materials furnished. They must file their claims within thirty days after the completion of the work or material furnished, in the office of the clerk of the superior court of the county where the building is situated, and commence an action within twelve months from the time the claims become due.[2]

Laborers have a general lien upon the property of their employers,[3] and also a special lien on the products of their labor.[4] These liens arise upon the completion of the labor, but can not exist against *bona fide* purchasers until reduced to execution and levied by the officer.[5] A lien exists in favor of those furnishing articles, etc., for carrying on saw mills, on said mills,[6] and in favor of laborers at steam mills.[7]]

[1] [Ga. Sup., sec. 377.]
[2] [Id., sec. 1980.]
[3] [Id., sec. 1974.]
[4] [Id., sec. 1975.]
[5] [Id., sec. 1976.]
[6] [Id., sec. 1985.]
[7] [Id., sec. 1984.]

ILLINOIS.

[SEC. 104. 1. *Taxes.*—Taxes are a lien on real property from the 1st of May of each year.[1]

2. *Dower and curtesy.*—The surviving husband or wife is entitled to one-third of the lands of which the husband or wife was seized of an estate of inheritance at any time during marriage, unless the same is relinquished in legal form.[2]

3. *Judgments and executions.*—Judgments in any court of record, either at law or in equity, are liens on lands from the time the same are rendered or revived for seven years. When execution is not issued on a judgment within one year from the time the same becomes a lien, it ceases to be a lien; but an execution may be issued on a judgment at any time within seven years, and becomes a lien on the real estate from the time it is delivered to the sheriff.[3]

There is no priority over judgments rendered at the same term, or same day in vacation. If execution is restrained by injunction, appeal, or order of the court, or is delayed on account of the death of the defendant, the time of the restraint is not considered part of the seven years.[4] Decrees in equity are liens on all lands respecting which they are made.[5]

Executions issued from the court of one county

[1] [Ills. R. S. 1880, p. 1289, sec. 253.]
[2] [Id., p. 549, sec. 1.]
[3] [Id., p. 861, sec. 1.]
[4] [Id., p. 861, sec. 2.]
[5] [Id., p. 192, sec. 45.]

to the sheriff of another county, become liens on a certificate being filed in the office of the recorder of the county.[1] Judgments in bastardy proceedings are liens.[2]

4. *Judicial proceedings.*—Attachments, whether issued in the county, or sent into the county from other courts, do not take effect against creditors and *bona fide* purchasers without notice, until a certificate of the levy is filed in the office of the recorder of the county in which the lands lie.[3]

5. *Decedents' debts.*—The lands of deceased persons are liable for their debts, but, if they are aliened *bona fide* before action brought, the heir or devisee, and not the purchaser, is liable to creditors for their value.[4]

6. *Official bonds.*—The bond of the county collector of taxes, filed in the office of the auditor, and the bond of the town and district collector, filed in the office of the county clerk, create liens on the lands of those officers.[5]

7. *Landlord's lien on crops.*[6]

8. *Mortgages.*—Mortgages take effect as to all creditors, and subsequent purchasers, without notice, from the time they are filed for record.[7] The rule of equity, that notice of the existence of an

[1] [Ills. R. S., p. 869, sec. 34.]
[2] [Id., p. 165, sec. 12.]
[3] [Id., p. 126, sec. 9.]
[4] [Id., p. 743, sec. 12.]
[5] [Id., pp. 1259, 1262, secs. 134, 146.]
[6] [Id., p. 921, sec. 31.]
[7] [Id., p. 316, sec. 30.]

unrecorded mortgage will postpone a subsequent incumbrancer, is adopted. Satisfaction may be entered on the margin of the record by the mortgagee or his assignee, or other legal representative, or the mortgage may be released by deed, under the mortgagee's signature and seal, attested and acknowledged.[1] A deposit of title deeds creates an equitable mortgage.[2]

9. *Leases.*—Leases for more than one year must be in writing.[3] They may be exempt as a homestead.[4]

10. *Mechanics' liens.*—Mechanics, material men, and laborers have liens on buildings, and appurtenances to buildings, and the land on which they stand, and upon all the property, real and personal, of railroad corporations.[5]

No creditor is allowed to enforce the lien to the prejudice of any other creditor, incumbrancer or purchaser, unless suit be instituted to enforce the lien within six months after the last payment for labor or materials has become due.[6] Subcontractors must bring an action within three months from the time of performance of subcontracts, etc.[7]

Contractors have a lien by special assessment for public improvements.[8]

11. *Purchase money liens.*][9]

[1] [R. S., p. 993, secs. 8, 9.]
[2] [Wilson *v.* Lyon, 51 Ill. 166.]
[3] [R. S., p. 740, sec. 2.]
[4] [Id., p. 676, sec. 1.]
[5] [Id., pp. 926–938.]
[6] [Id., p. 931, sec. 28.]
[7] [Id., p. 935, sec. 47.]
[8] [Id., p. 256, sec. 162.]
[9] [Moshier *v.* Meek, 80 Ills. 79.]

INDIANA.

[SEC. 105. 1. *Taxes.*—The lien for taxes attaches on all real estate on the first of April, annually, and is perpetual for all taxes due from the owners thereof.[1] City taxes on real estate are a lien on the 1st of April, annually, to the same extent as a judgment of a court of record of general jurisdiction, and has preference over any personal charge. The lien is not destroyed by a sale or transfer of such real estate.[2]

2. *Dower.*—The common law estate of dower has been abolished.[3] But the widow is entitled to one-third in fee of all real estate, free from all demands of creditors, provided that, where the real estate exceeds in value ten thousand dollars, the widow shall have one-fourth only, and, where the real estate exceeds twenty thousand dollars, one-fifth only, as against creditors.[4] Where a provision is made for the widow in the will, she is put to her election.[5] She can not alienate the land during a second or subsequent marriage, where there are children or their descendants alive of the first marriage, unless they are twenty-one years of age, and join in the conveyance.[6] If the husband dies intestate leaving a widow and

[1] [Ind. R. S. 1881, sec. 6446.]
[2] [Id., sec. 3086.]
[3] [Id., sec. 2482.]
[4] [Id., sec. 2483.]
[5] [Id., sec. 2505.]
[6] [Id., sec. 2484.]

one child, the real estate descends one-half to the widow and one-half to the child.[1]

3. *Curtesy.*—The common law estate of curtesy is abolished,[2] but the husband is entitled to a third of the wife's land in fee, subject to the payment of her debts contracted before marriage.[3]

4. *Judgments and executions.*—Judgments of United States circuit courts are liens upon real estate throughout the state.[4] All final judgments in the supreme and circuit courts, for the recovery of money or costs, are liens upon real estate, liable to execution, in the county where judgment was rendered, for ten years after the rendition thereof, and no longer, exclusive of the time during which the party may be restrained from proceeding thereon, by appeal or injunction, or by the death of the defendant, or by agreement of parties entered of record.[5]

The filing of a certified copy of a judgment rendered in a corresponding court in another county, creates a lien on the land, including chattels real, of the defendant, in the county in which the copy is filed.[6]

The filing of a transcript of a judgment of a justice of the peace, and docketing it in the clerk's

[1] [Ind. R. S., sec. 2486.
[2] [Id., sec. 2482.]
[3] [Id., sec. 2485.]
[4] [Simpson *v.* Niles, I Ind. 196.]
[5] [Ind. R. S., sec. 608.]
[6] [Id., secs. 610, 611.]

office of any court in the state, creates a lien from the time of the filing.[1]

An execution against property, issued to another county, binds the real estate of the defendant from the time of the levy.[2]

5. *Judicial proceedings.*—Orders of attachment bind the property of the defendants in the county subject to execution, and become a lien from the time the order is delivered to the sheriff, in the same manner as an execution.[3] Judgments on bonds payable to the state bind the debtor's real estate from the commencement of the action.[4]

Every recognizance binds the estate of the principal from the time it is taken; but binds the estate of the surety only from the time judgment of forfeiture is rendered.[5] The filing of a transcript of proceedings before a justice of the peace in bastardy cases, in the circuit court, operates from the time of filing as a lien upon the real estate of the defendant, to the extent of the judgment which may afterward be rendered against him.[6]]

Recognizances taken by justices for the appearance of prisoners, in the circuit or criminal court, and docketed there; and recognizances forfeited before justices for the non-appearance of prisoners,[7]

[1] [Ind. R. S., sec. 613.]
[2] [Id., sec. 689.]
[3] [Id., sec. 922.]
[4] [Id., sec. 609.]
[5] [Id., sec. 1220.]
[6] [Id., sec. 987.]
[7] [Id., sec. 1631.]

or on change of venue;[1] docketed in like manner, operate as liens, from the date of the entry, upon all lands in the county of the parties thereto.[2]

6. *Mortgages.*—The statute has made the following form sufficient: "A. B. mortgages and warrants to C. B. (here describe the premises), to secure the re-payment of (here recite the sum for which the mortgage is granted, or the note or other evidence of debt, or a description thereof, sought to be secured, also the date of re-payment). This implies a warranty of a perfect title, and a warranty against all incumbrances. Mortgages must be recorded within forty-five days from their execution.[3] No power of sale can be reserved in a mortgage.[4] Satisfaction of a mortgage may be entered on the margin of the record, or may be effected by a separate receipt acknowledged and recorded as a deed.[5] The record of an assignment of the mortgage is notice to the mortgagor.[6]

7. *Leases.*—Leases for a term not exceeding three years, are good without deed.[7] Leases for a longer period are required to be acknowledged, or proved,

[1] [Ind. R. S., sec. 1632.]

[2] [Id., sec. 1645.]

[3] [Id., secs. 2930, 2931.]

[4] [Id., sec. 1088. But may be in trust mortgages; Eaton, etc. R. R. Co. *v.* Hunt, 20 Ind. 457.]

[5] [Id., secs. 1090, 1091.]

[6] [Id., Laws 1877, p. 99; R. S., sec. 1093.]

[7] [Id., sec. 2919.]

and recorded within forty-five days from the date of their execution, in the same manner as deeds.[1]

8. *Mechanics' liens.*—Persons performing labor or furnishing materials or machinery for any building, mill, distillery, or manufactory, may acquire liens by filing their claims in the office of the recorder of the county within sixty days after the completion of the work, etc., which may be enforced by action in the circuit or superior court of the county where the work was done or materials furnished, within a year from the filing of the claim or the expiration of the credit.[2]

9. *Liens created by city ordinances.*—The statute allows liens on town lots for grading, paving, or planking the sidewalks,[3] and for the improvement of the streets;[4] and for the making of levees, drains, or breakwaters.[5]

10. *Insurance liens.*—Mutual fire insurance companies have a lien on the building insured, and the land on which it stands, to secure the payment of the deposit note.[6]]

IOWA.

[SEC. 106. 1. Taxes upon real estate are liens from the first of November in each year, as between vendor and purchaser.[7]

[1] [Ind. R. S., sec. 2931.]
[2] [Id., secs. 5293–5297; Acts 1883, ch. 115.]
[3] [Id., secs. 3357–3360.]
[4] [Id., sec. 3366.]
[5] [Id., sec. 3106.]
[6] [Id., sec. 3758.]
[7] [Iowa Stat. 1880, sec. 853.]

2. *Dower.*—The widow is entitled to one-third in value of all real estate in which the husband, at any time during the marriage, had a legal or equitable estate.

3. *Curtesy.*—The common law estate of curtesy is abolished, but a widower is entitled to the same interest in his deceased wife's lands as she would have had in his.[1]

4. *Judgments and executions.*—Judgments of the circuit or district courts of the United States, rendered in the state, become liens for ten years from the date of judgment, by filing attested copies of the same in the office of the clerk of the state district court of the county in which the land lies.

No lien attaches in any county until the date of filing such transcript, except in the county wherein judgment was rendered, in which case, the lien attaches from the date of the rendition of the judgment.[2]

Judgments of the supreme, district, or circuit courts of the state are liens for ten years from the date of the judgment.[3] If the land lies in the county where the judgment was rendered, the lien attaches from the date of the rendition;[4] if in another county, from the time of filing an attested copy of the judgment in the office of the clerk of

[1] [Ia. Stat. 1880, sec. 2440.]
[2] [Id., p. 773, sec. 2; Ia. 17 G. A. Ch. 129.]
[3] [Ia. Stat. 1880, sec. 2882.]
[4] [Id., sec. 2883.]

the district court of the county where the land lies.[1] Judgments for fines in criminal cases become liens in the same way.[2]

Judgments of justices of the peace become liens from the time a transcript is filed in the office of the circuit court.[3]

Judgments in bastardy cases are liens,[4] and undertakings for bail in criminal cases.[5]

Judgments of the superior courts in cities become liens upon the real estate in the county in which the city is situated, by filing a transcript in the office of the clerk of the circuit court. In other counties, they are liens in the same manner as judgments in the circuit and district courts.[6]

5. *Judicial proceedings.*—Attachments on lands are not notice, unless the sheriff making the levy shall have entered them in the "encumbrance book" in the clerk's office of the county.[7] The levy of an attachment and the service of a notice, in equitable actions, supplemental to execution, create a lien.[8] On partnership property, the lien dates from the time it is taken possession of.[9]

Bail undertakings are liens on the lands of the

[1] [Ia. Stat. 1880, sec. 2884.]
[2] [Id., sec. 4609.]
[3] [Id., secs. 3567, 3568.]
[4] [Id., sec. 4717.]
[5] [Id., sec. 4606.]
[6] [Id., p. 143, sec. 18.]
[7] [Id., sec. 3022.]
[8] [Id., sec. 2969.]
[9] [Id., sec. 2974.]

persons acknowledging them, from the time that they are filed in the office of the clerk of the district court.[1]

The defendant may redeem lands sold at judicial sales within a year from the day of sale, and is entitled to retain the possession in the meantime.[2]

The purchaser is allowed twenty days after the expiration of the full time of redemption to record the evidence of his purchase.[3] The rule is the same on foreclosnre.[4]

6. *Lis pendens.*—The filing of the petition creates a *lis pendens.*[5]

7. *Landlord's lien.*—The landlord has a lien for his rent upon all crops on the demised premises.[6]

8. *Mortgages.*—Mortgages are constructive notice from the date of filing.[7] They are not deemed lawfully recorded, unless previously acknowledged or proved.[8] Since April 1st, 1861, deeds of trust in the nature of a mortgage must be foreclosed.[9]

9. *Leases.*—Leases for a term not exceeding one

[1] [Ia. Stat., sec. 4606.]
[2] [Id., sec. 3102.]
[3] [Id., sec. 3125.]
[4] [Id., sec. 3321.]
[5] [Id., sec. 2628.]
[6] [Id., sec. 2017.]
[7] [Id., sec. 1941.]
[8] [Id., sec. 1942.]
[9] [Id., sec. 3318.]

year are valid without writing.[1] Those for a longer period should be recorded.[2]

10. *Mechanics' liens.*—Claims for mechanics' liens must be filed with the clerk of the district court of the county within ninety days, by subcontractors within thirty days, after the materials are furnished or work done. The failure to file the same within the time does not defeat the lien, except against purchasers or incumbrancers in good faith, whose rights accrued after the thirty or ninety days, and before any claim for the lien was filed; but where a lien is claimed upon a railway, the subcontractor has sixty days from the last day of the month in which the labor, etc., were done, to file his claim.[3]

11. *Occupying claimants.*[4]]

KANSAS.

[SEC. 107. 1 *Taxes.*—The lien for taxes attaches on the first of November in the year in which they are levied, and continues until paid.[5]

2. *Dower.*—The common law estate of dower is abolished.[6] The widow is entitled to one-half in fee of any legal or equitable real estate of the husband, at any time during marriage, which has not been sold on execution or at judicial sale, or which is not necessary for the payment of

[1] [Ia. Stat., sec. 3664.]
[2] [Id., sec. 1941.]
[3] [Id., p. 598, sec. 6.]
[4] [Id., secs. 1976–1987.]
[5] [Kans. Comp. L. 1881, p. 956, sec. 85.]
[5] [Id., p. 380, sec. 28.]

debts, or of land of which the husband has made a conveyance, when, at the time of the conveyance, the wife has not or never has been a resident of the state.[1]

3. *Curtesy.*—The estate by curtesy has also been abolished. The husband has the same right in the lands of his deceased wife as the wife would have had in his, in case she had survived him.[2]

4. *Judgments and executions.*—Judgments of courts of the United States rendered in this state, and of courts of record of this state, are liens on the real estate of the debtor, within the county in which the judgment is rendered, from the first day of the term at which it is rendered. But judgments by confession, and judgments rendered at the same term during which the action was commenced, bind the land only from the day on which such judgment was rendered.

An attested copy of the journal entry of any judgment, with a statement of the costs taxed against the debtor in a case, filed in the office of the clerk of the district court of any county, creates a lien on the real estate of the debtor within the county from the date of filing the copy.[3]

Judgments become dormant in five years.[4] Between judgments rendered at the same term there is no preference, if executions are issued thereon

[1] [Kans. Comp. L. 1881, p. 379, sec. 8.]
[2] [Id., p. 380, sec. 28.]
[3] [Id., p. 656, sec. 419.]
[4] [Id., p. 660, sec. 445.]

during that term or within ten days after the term.[1] Fines and costs under the dram shop law are a lien on the land of the defendant.[2]

Land sold under judicial proceedings may be redeemed within two years from the day of sale.[3] This limitation does not apply to any suit when the plaintiff is the executor or administrator of the estate of a deceased person, or when the suit is prosecuted for the purpose of foreclosing a mechanic's lien, in which case there is no redemption.[4]

5. *Judicial proceedings.*—Attachments bind land from the time of the service.[5]

6. *Trustee's expenses.*—Trusts vesting a naked legal estate in the trustee, without requiring the performance of any duties by him, are forbidden by statute.[6] Their powers, duties, and compensation, are regulated by statute.[7]

7.—*Landlord's lien on the crop.*[8]

8. *Mortgages.*—No mortgage is valid, as to subsequent purchasers for a valuable consideration without notice, unless recorded in the office of the register of deeds in the county where the land lies.[9]

[1] [Kans. Comp. L. 1881, p. 660, sec. 447.]

[2] [Id., p. 388, sec. 18.]

[3] [Laws 1861, p. 241.]

[4] [Kans. Com. L., p. 799, sec. 1. Lands sold for taxes may be redeemed within three years from the day of sale. Id., p. 963, sec. 127.]

[5] [Id , p. 628, sec. 206.]

[6] [Id., p. 990, sec. 13.]

[7] [Id., pp. 989, 990.]

[8] [Id., p. 521, sec. 24.]

[9] [Id., p. 555, sec. 2.]

Powers to sell land, in a mortgage or otherwise, vest in the person entitled to the money.[1]

Satisfaction of mortgages may be entered on the margin, signed by the mortgagee, or his attorney, assignee, or personal representative, acknowledging the satisfaction in the presence of the register of deeds or his deputy, who must subscribe the same as a witness, or by a receipt indorsed thereon, signed by the mortgagee, his agent or attorney, which may be entered on the margin of the record.[2]

A mortgage given by a purchaser to secure the payment of purchase money, has preference over a prior judgment against such purchaser.[3]

9. *Leases.*—Leases not exceeding one year are valid without deed.[4]

10. *Mechanics' liens.*—The statute gives a lien on any building or appurtenance of any building, bridge, fence, railroad, or other work of internal improvement, and the machinery, from the time of making the contract, for any work done or materials furnished, if a claim is filed in the office of the register of deeds within four months after the furnishing of the materials or the completion of the building; and allows twelve months from the same time to bring an action to enforce the lien.[5]

If any note, not exceeding twelve per cent interest per annum, has been taken for any such labor

[1] [Kans. Comp. L., p. 990, sec. 18.]
[2] [Id., p. 555, sec. 5.]
[3] [Id., sec. 4.]
[4] [Id., p. 464, sec. 5.]
[5] [Id., pp. 688, 689, secs. 630–633.]

or material, it will be sufficient to file a copy of the note, with a sworn statement that it was given for such labor, etc., in the office of the district clerk.[1]

In case a note is given, no lien can be enforced, unless an action is commenced within a year from the maturity of the note.[2]

Subcontractors must file their claims within sixty days after the completion of the work, etc.[3]

11. *Occupying claimant's lien.*[4]]

KENTUCKY.

SEC. 108. 1. *Taxes.*—The commonwealth has a lien for the revenue, railroad, turnpike, and county tax on the estate of each person assessed for taxation, which can not be defeated by gift, devise, sale or alienation.[5]

2. *Dower.*—Dower exists in legal and equitable estates, substantially, as at common law.[6]

3. *Curtesy.*—Curtesy also exists as at common law, except that the power of the husband to sell or lease his life estate, and its liability to be taken in execution for his debts, are restrained by statute.[7]

[1] [Kans. Comp. L., p. 688, sec. 630.]

[2] [Id., p. 689, sec. 633.]

[3] [Id., p. 688, sec. 631.]

[4] [Id., pp. 684–686.]

[5] [Ky. Gen. Stat. 1881, p. 709, sec. 2. Taxable estate is valued as of the 10th of January, in the year listed. Persons owning the same on that day are bound for the taxes. Id. p. 720, sec. 11.]

[6] [Id., p. 527, sec. 2.]

[7] [Id., pp. 518, 519. His contingent right of curtesy can not be subjected to the payment of his debts during her life.]

4. *Judgments and executions.*—A writ of *fieri facias* may be issued on any final judgment or decree of a court of record, and binds the estate of the defendant from the time it is delivered to the proper officer to execute.[1] If lands sold on execution do not bring two-thirds of the appraised value, the defendant and his representatives have a right to redeem them within a year from the day of sale, and to retain possession until the year expires.[2] A purchaser at an execution sale of incumbered property, has a lien on the property for the purchase money, and interest at the rate of ten per cent. per annum from the day of sale until paid, subject to the prior incumbrances.[3] Judgments confessed by insolvents to preferred creditors are void.[4] Powers of attorney to confess judgment given before an action is instituted, are void.[5] Bonds for the stay of execution, called forthcoming and replevin bonds, returned by the officer to the proper office, have the force and effect of a judgment.[6]

5. *Judicial proceedings.*—An order of attachment binds the defendant's property in the county, which might be seized under an execution against him, from the time of the delivery of the order to the sheriff.[7] An attachment has priority over trust

[1] [Ky. Gen. Stat. 1881, pp. 416, 417.]

[2] [Id., p. 427, sec. 4.]

[3] [Id., 435, sec. 1.]

[4] [Id., p. 490, sec. 1. Judgments suffered by debtors in contemplation of insolvency, and with the design to prefer one or more creditors, enure to the benefit of all creditors.]

[5] [Id., p. 238, sec. 1.]

[6] [Id., p. 425, sec. 1.]

[7] [Ky. Code, 1876, sec. 212.]

deeds and mortgages not lodged for record.[1] In cases of conviction of felony, the party injured has a lien on the estate of the criminal, from the time of his arrest.[2]

6. *Decedent's debts.*—The heir and devisee take the estate subject to the ancestor's debts, but the estate is not liable in the hands of a *bona fide* purchaser for valuable consideration, if aliened by the heir or devisee before suit is brought by the creditor.[3]

7. *Lis pendens.*—The ordinary doctrine of equity upon this subject is followed in Kentucky.[4]

8. *Landlord's lien.*[5]

9. *Mortgages.*—No mortgage is effectual against purchasers without notice, or any creditor, unless recorded in the clerk's office of the court of the county in which the premises, or a greater part of them, shall lie.[6] Mortgages, and deeds of trust in the nature of mortgages, take effect from the time they are lodged for record.[7] Mortgages made by debtors in contemplation of insolvency, and with design to prefer one or more creditors, inure to the benefit of all creditors.[8] The cancellation of mortgages is effected by satisfaction being entered on the margin of the record by the person entitled

[1] [Laws 1861, chap. 371, sec. 13.]

[2] [Ky. Gen. Stat., p. 320, sec. 18.]

[3] [Id., p. 489, secs. 5, 8. In such case the heir or devisee is liable.]

[4] [1 Stant. Ky. Dig., p. 758.]

[5] [Ky. Gen. Stat., p. 604, sec. 13.]

[6] [Id., p. 256, sec. 9.]

[7] [Id., p. 256, sec. 11.]

[8] [Id., p. 490, sec. 1.]

thereto, or by his personal representative, attested by the clerk or his deputy.[1]

10. *Leases.*—Leases for more than one year must be by deed.[2] If for more than five years, the deed is invalid against purchasers without notice, and creditors, unless proved and lodged for record.[3]

11. *Liens of mechanics.*—Mechanics and material men, supply men of railroads, rolling-mills, manufactures, or other establishments, have a lien on the land for labor done and materials furnished.[4]

12. *Occupying claimants.*[5]

MICHIGAN.

[SEC. 109. 1. *Taxes*—are a lien on the first of December, and continue until paid.[6]

2. *Dower.*—The widow is entitled to one-third of all the lands of which the husband was seized of an estate of inheritance at any time during marriage.[7] As against the mortgagee, and those claiming under him, the widow is not entitled to dower out of land of which a mortgage is given to secure the purchase money, although she did not unite in the mortgage,

[1] [Ky. Gen. Stat., p. 256, sec. 12.]

[2] [Id., p. 255, sec. 2.]

[3] [Id., p. 255, sec. 8.]

[4] [Claims for liens in favor of mechanics, laborers, and material men, must be filed within sixty days from the completion of the labor, etc., in the office of the clerk of the county court, and an action must be commenced within six months from the day of filing the claim. Id. p. 622, secs. 6 and 8 · id. p. 982.]

[5] [Id., p. 680, secs. 1–10.]

[6] [Mich. Pub. Acts 1882, p. 16, sec. 26.]

[7] [Mich. Comp. Laws 1871, sec. 4269.]

but is entitled to dower therein as against all other persons.[1]

Dower is barred by joining with the husband in a conveyance, or joining with him in a subsequent deed, acknowledged in like manner,[2] or by deed executed by the wife alone to one who has theretofore acquired and then holds the husband's title, if the intent to bar her right of dower is expressed in the deed;[3] by jointure settled on her, with her assent, before marriage, provided it consists of a freehold estate for the life of the wife, at least to take effect in possession immediately after his death, or by a pecuniary provision made for the benefit of the intended wife, and in lieu of dower.[4] Her separate estate is not liable for his debts.[5]

3. *Curtesy.*—Curtesy is abolished.[6]

4. *Judgments and executions.*—A levy by execution on real estate is not valid against *bona fide* conveyances, made subsequent to such levy, until notice thereof is filed by the officer making the same in the office of the register of deeds of the county where the premises are situated. Such levy is a lien only from the time such notice is deposited.[7]

Executions have preference from delivery to the

[1] [Mich. Comp. L. 1871, sec. 4272.]
[2] [Id., sec. 4281.]
[3] [Mich. Pub. Acts 1877, p. 52.]
[4] [Mich. Comp. L., secs. 4282, 4284.]
[5] [Id., sec. 4800.]
[6] [Tong *v.* Marvin, 15 Mich. 60.]
[7] [Public Acts 1875, p. 3.]

officer, as between each other.[1] The same rule applies with reference to executions and attachments against the property of the same person.[2] But executions before justices of the peace have preference, when actually levied, over any other execution or attachment, whether issued out of a court of record or not.[3]

5. *Judicial proceedings.*—Attachments are a lien on the land from the time a certified copy of the attachment, with a description of the real estate, is deposited in the office of the register of deeds in the county where the real estate is situated.[4]

6. *Lis pendens.*—Notice of the pendency of an action in chancery, to the purchaser of real estate, must be filed by the complainant with the register of deeds of the county.[5]

7. *Redemption.*—Real estate may be redeemed within one year by the person against whom an execution is issued, or by his devisee, executor, administrator, or grantee.[6]

8. *Drain and ditch laws.*—Taxes assessed under these laws are a lien on the lands.[7] Assessments made on water-power companies, for defraying the expenses of repairing, building, or making permanent improvements on the same, are liens. These

[1] [Mich. Comp. Laws 1871 sec. 6092.]
[2] [Id., sec. 6093.]
[3] [Id., sec. 6094.]
[4] [Pub. Acts 1875, p. 183.]
[5] [Comp. Laws 1871, p. 1535, sec. 5065.]
[6] [Id., p. 1443, sec. 4640.]
[7] [Id., secs. 1783, 1789; Public Acts 1881, p. 375.]

are in the nature of a mortgage, foreclosed and collected in the same manner.[1]

9. *Mortgages.*—Mortgages are notice to subsequent purchasers, and incumbrances, from the time of being filed for record.[2]

Mortgages to be recorded must be attested and acknowledged.[3]

Satisfaction of a mortgage is made by entry in the margin of the record, signed by the mortgagee or his personal representative or assignee, acknowledging satisfaction in the presence of the register of deeds or his deputy, who must subscribe the same as a witness;[4] or by a certificate presented to the register of deeds, executed by the mortgagee, his personal representatives, or assigns, acknowledged, approved, and certified, or upon the presentation to such register of a certificate of the circuit court of the county, signed by the judge, under seal, certifying that it is made to appear to such court that the mortgage has been paid.[5]

10. *Leases.*—Leases for a longer period than one year must be in writing.[6] Agricultural leases for a longer period than twelve years are prohibited.[7] Leases are void on conviction of the lessees of keeping gaming houses or houses of ill fame.[8]

[1] [Comp. Laws 1871, p. 914.]
[2] [Id., sec. 4231.]
[3] [Id., sec. 4249.]
[4] [Id., sec. 4243.]
[5] Id., sec. 4244.]
[6] [Id., sec. 4694.]
[7] [Const., art. 18, sec. 12.]
[8] Comp. Laws, p. 2117. Void at the option of the lessor. Id., sec. 11.]

10. *Mechanics' liens.*—For work done and materials furnished, mechanics, laborers, etc., have a lien on the building and lot on which it stands. The contractor, subcontractor, laborer, or material man, must file in the office of the register of deeds of the county a written notice, a copy of which must be served on the owner or agent. The lien continues for sixty days after the filing of the notice, and no longer, unless an action is commenced. The proceedings are by bill in chancery; and notice of *lis pendens*, filed with the register of deeds, has the effect of continuing the lien pending the proceedings.[1]

11. *Occupying claimants.*[2]]

MINNESOTA.

[SEC. 110. 1. *Taxes.*—Taxes are a lien from, and including the first of May, until paid; but, as between grantor and grantee, such lien does not attach until the first of December of each year.[3]

2. *Dower and curtesy.*—The surviving husband or wife is entitled to an undivided one-third, in fee-simple, of the lands of the other, of which he or she was seized, at any time during coverture.[4] If, at the time of the death of a married man or woman, the surviving husband or widow has willfully, and without cause, left the deceased person for the space of one year immediately prior to such de-

[1] [Public Acts 1879, pp. 274–279.]
[2] [Comp. Laws, sec. 6254; Public Acts 1882, p. 35.]
[3] [Min. R. S. 1878, p 241, sec. 105.]
[4] [Id., p. 565, sec. 3.]

cease, such survivor is not entitled to any estate in the lands of the deceased.[1]

3. *Judgments and executions.*—Judgments for the payment of money in the United States circuit or district court, become a lien on the real property of the debtor in the county in which the judgment is rendered, from the time of docketing it, and in any other county in the state upon filing in the office of the clerk of the district court of such county a duly certified copy of such docket.[2]

Judgments for the payment of money are a lien on the real property for ten years. When the judgment is docketed, it becomes a lien in any other county than that in which it is rendered, from the docketing of a transcript of the original docket.[3] Transcripts of judgments before justices of the peace for more than ten dollars become a lien on the real estate, to the same extent as a judgment of the district court, and upon filing with the district court of any other county a transcript of the original docket, in the same manner as provided upon filing transcripts of judgments in the district court. But no execution can be issued thereon until an execution has been is- by the justice of the peace, and returned unsatisfied, which must appear by the certificate of the justice.[4]

[1] [Min. R. S. 1878, p. 565, sec. 4.]
[2] [Id., p. 751, sec. 279.]
[3] [Id., p. 751, sec. 277.]
[4] [Id., p. 686, sec. 73.]

Execution may be issued to enforce a judgment, at any time within ten years after the entry of the same.[1]

Real property is not bound by a judgment against an executor or administrator, nor liable to be sold by virtue of an execution issued upon such judgment.[2]

A judgment obtained against the heir personally for a debt, is a lien on the real estate; but, when the property is aliened to a *bona fide* purchaser, before action brought, it is not a lien on the property. The heir, in that case, is personally bound.[3]

4. *Judicial proceedings.*—Attachments bind the land from the time a certified copy of the attachment has been delivered for record in the office of the register of deeds in the county where the land is situated.[4]

5. *Redemption.*—Where real estate is sold under execution, judgment, or decree, the judgment debtor, his heirs, or assigns, may redeem within one year after the day of sale, by paying to the purchaser the amount of his bid, with interest at the rate of seven per cent. per annum; and, if the purchaser is a creditor having a prior lien, the amount thereof, with interest. If no such redemption is made, the senior creditor may redeem within five days after

[1] [Min. R. S., p. 753, sec. 293.]
[2] [Id., p. 825, sec. 4.]
[3] [Id., p. 828, secs. 27, 28.]
[4] [Id., p. 731, sec. 160.]

the expiration of said year, and each subsequent creditor within five days after the time allowed all prior lien holders, by paying the amount aforesaid; but no creditor can redeem, unless within the year he files notice of his intention in the office of the clerk of the court where judgment is entered.[1]

6. *Lis pendens.*—The notice of pending actions filed in the office of the register of deeds is notice to purchasers and incumbrancers.[2]

7. *Mortgages.*—Mortgages are notice from the time of being filed for record. They can not be recorded unless properly executed.[3] Satisfaction of a mortgage is made by an entry on the margin.[4]

The record of the assignment of a mortgage is not notice of such assignment to the mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them to the mortgagee.[5]

8. *Leases.*—Leases for more than one year must be in writing.[6] A lease for a term exceeding three years is a "conveyance," under the statute requiring the formalities of deeds in its execution.[7]

Distress for rent is abolished in this state.[8]

[1] [Min. R. S., p. 759, sec. 324.]
[2] [Id., p. 819, sec. 34.]
[3] [Id., p. 152, sec. 184.]
[4] [Id., p. 150, sec. 177.]
[5] [Id., p. 538, sec. 24.]
[6] [Id , p. 543, sec. 12.]
[7] [Id., p. 538, sec. 26.]
[8] [Id., p. 820, sec. 39.]

9. *Trustees' expenses.*—Trustees have a lien on the estate for their expenses, charges, etc.[1]

10. *Mechanics' liens.*—Mechanics, material men, etc., must file their claims within sixty days after the time of performing their labor, etc., in the office of the recorder of deeds, and have one year from the commencement of such labor to bring an action;[2] which is enforced in the same manner as actions for the foreclosure of a mortgage.[3] If the contractor enters into a bond with the owner for the use of all persons who may do work or furnish materials, conditioned for the payment of all just claims for such work, etc., as they become due, and files the same in the office of the register of deeds of the county in which the contract is to be performed, no lien can attach in favor of the persons therein mentioned; but such bond can not operate to relieve from liability the property upon which the labor, etc., is performed, unless a notice setting forth the existence of the bond be conspicuously posted about the premises during the performance of the labor, and at the time of furnishing the material.[4] Mechanics, clerks, etc., have a lien for their wages upon the works, manufactory, business, etc., of their employers, for a period not exceeding six months, immediately preceding the transfer of such works, etc., and must file

[1] [Min. R. S., p. 550, sec. 9.]
[2] [Id., p. 872, sec. 6.]
[3] [Id., p. 873, sec. 8.]
[4] [Id., p. 872, sec. 3.]

their claims within one month after they become due.[1]

11. *City ordinance.*—For grading streets, constructing and repairing sidewalks and alleys, by order of the city council, a lien is created on the lots of owners benefited thereby, as in case of city, county, and state taxes.[2] And on village property for the construction and repair of sidewalks.[3]

12. *Drainage law.*—A lien on lands drained is created by filing the assessment in the office of the register of deeds of the county.[4]

13. *Crops of grasshopper sufferers.*—A lien on the crops of grasshopper sufferers, in favor of the state, is created by filing the contract which the applicant has made to pay for the grain.[5]

NEBRASKA.

[SEC. 111. 1. *Taxes.*—Taxes on real property are a lien from and including the 1st of April in the year in which they are levied until paid.[1]

Municipal taxes, and special assessments upon real estate in cities of the first class, are a perpetual lien from the day on which the same were levied, and persons or corporations purchasing real estate for any tax or assessment so levied, shall, after the

[1] [Min. R. S., p. 876, sec. 22.]
[2] [Id., p. 203, sec. 190.]
[3] [Id., p. 209, sec. 222.]
[4] [Id., p. 1019, sec. 55.]
[5] [Id., p. 1029, sec. 109.]
[1] [Comp. Stat. 1881, p. 426, sec. 138.]

lapse of five years from the time of recording the treasurer's deed therefor, have a complete title.[1]

2. *Dower.*—The widow is entitled to one-third of all the lands of which her husband was seized of an estate of inheritance at any time during marriage.[2] Out of lands mortgaged to secure the payment of the purchase money, the widow is not entitled to dower as against the mortgagee.[3]

The widow is barred of her dower by joining in a deed with her husband, or by a subsequent deed, acknowledged in like manner; by jointure, or by a pecuniary provision in lieu of dower.[4] Her alienage will not bar her right of dower.[5]

3. *Curtesy.*—When husband and wife are seized of any estate of inheritance in lands, the husband, on the death of his wife, holds the lands for his life as tenant by the curtesy. But if the wife, at her death, had issue by a former husband, to whom the estate might descend, such issue takes the same, discharged of the right of the surviving husband to hold it as tenant by the curtesy.[6]

4. *Judgments and executions.*—Judgments are liens on the lands of the judgment debtor for five years, after which they become dormant.[7]

[1] [Comp. Stat. 1881, p. 92, sec. 38. Taxes on railroad property are a lien from the first day of March of each year. Id., p. 439.]

[2] [Id., p. 212, sec. 1.]

[3] [Id., secs. 3, 4.]

[4] [Id., p. 213, secs. 12, 13, 15.]

[5] [Id., p. 214, sec. 20.]

[6] [Id., p. 215, sec. 29.]

[7] [Id., p. 591, sec. 482. Unless execution is issued within five years.]

Real estate is bound by a judgment from the first day of the term at which it is rendered. But judgments by confession, and judgments rendered at the same term at which the action is commenced, bind the lands only from the day on which they are rendered. All other lands are bound from the time they are seized in execution.[1] If execution is not issued within five years from the date of any judgment, or if five years intervene between the date of the last execution issued, and the time of issuing another, the judgment becomes dormant.[2]

The transcript of a judgment rendered in the probate court, and filed in the office of the clerk of the district court, is a lien on the real estate in the county where the same is filed.[3] The laws upon this subject are similar to those of Ohio, to which reference is made.

A judgment loses its preference when an execution is not taken out within five years after its rendition.[4]

Transcripts of justices of the peace, filed in term time, are a lien on the real estate of the judgment debtor from the day of filing in the district clerk's office. When filed in vacation, as against the judgment debtor, it is a lien from the day of filing; and as against the subsequent judgment creditors, from the first day of the next term.[5]

[1] [Comp. Stat., p. 590, sec. 477.]
[2] [Id., p. 591, sec. 482.]
[3] [Id., p. 207, sec. 18.]
[4] [Id., p. 597, sec. 509.]
[5] [Id., p. 604, sec. 562.]

5. *Judicial proceedings.*—The laws are similar to those of Ohio. Where there are several orders of attachments before justices of the peace against the same person, in the hands of the same officer, they must be executed in the order in which they are received.[1]

6. *Lis pendens.*—When summons is served or publication made, the action is pending to charge third persons with notice.[2]

7. *Redemption.*—Redemption from the lien on an execution or sale may be made at any time before the sale is confirmed by the court, by paying the amount of the decree or judgment, with interest and costs. In case the real estate is sold to any one not a party plaintiff to the suit, the person redeeming must pay to the purchaser twelve per cent interest on the amount of the purchase price, from the day of sale to the day of redemption, or deposit the same with the clerk of the court where the decree or judgment was rendered.[3]

8. *Mortgages.*—Mortgages are notice to subsequent purchasers and incumbrancers from the time they are delivered to the clerk for record.[4] Deeds intended as mortgages, though absolute in terms, are considered as mortgages.[5]

Mortgages are discharged by an entry in the

[1] [Comp. Stat., p. 636, sec. 931.]

[2] [Id., p. 541, sec. 85.]

[3] [Id., p. 595, sec. 497*a*.]

[4] [Id., p. 389, sec. 16.]

[5] ["Every deed conveying real estate, which by any other instrument in writing shall appear to have been intended only as a security in the nature of a mortgage, shall be considered as a mortgage." Id., p. 390, sec. 25.]

margin of the record, signed by the mortgagee, or his personal representative or assigns, acknowledging the satisfaction in the presence of the county clerk or his deputy, who must subscribe the same as a witness; or, by a certificate executed by the mortgagee, his personal representative or assigns, acknowledged or proved and certified, which certificate must be recorded.[1]

9. *Leases.*—Leases exceeding one year must be in writing.[2]

10. *Mechanics' liens.*—Mechanics, laborers, and material men, have a lien on the structures erected, repaired, and the materials furnished by them. They must file their claims within four months from the performance of the work, etc. The lien continues for two years from the commencement of the labor, etc. Laborers on railroads, bridges, canals and ditch companies, have a lien on the work for labor done and materials furnished. They must file their claims within ninety days, and subcontractors within sixty days, from the day on which the last of the material was furnished or labor performed, provided that, when a lien is claimed upon a railway, a subcontractor shall have sixty days from the last day of the month in which the labor, etc., was done, in which to file his claim. Such lien continues for two years, and, when suit is brought, the lien continues until the suit is determined.[3]

11. *Occupying claimants.*[4]]

[1] [Comp. Stat., p. 391, secs. 26, 27.]
[2] [Id., p. 287, sec. 5.]
[3] [Laws, 1881, pp. 259–269. Comp. Stat. pp. 343–347.]
[4] [Comp. Stat., pp. 365–367.]

NEW YORK.

[SEC. 112. 1. *Dower.*—A widow is entitled to a third of all the lands of which her husband was seized of an estate of inheritance at any time during marriage. The widow of an alien, who, at the time of her husband's death is entitled by law to hold real estate, if she is an inhabitant of the state at the time of such death, is entitled to dower.

A widow is not entitled to dower out of lands mortgaged to secure the payment of the purchase money, as against the mortgagee or those claiming under him, although she did not unite in the mortgage, but is entitled to dower as against all other persons,[1] and one-third of the surplus for life after paying the mortgage.[2] A widow is barred of dower in case of divorce for her misconduct; by jointure, to which she must assent; by a pecuniary provision in lieu of dower, assented to by her.[3]

The wife's separate property is free from the control of her husband, and not liable for his debts.[4]

2. Curtesy exists as at common law. It may be defeated by the wife conveying her lands to a third person during coverture.[5]

3. *Judgments and executions.*—Judgments docketed in the county clerk's office are a charge for ten years after filing the judgment roll upon the

[1] [N. Y. R. S., vol. 3, p. 2197, secs. 1, 2, 5.]
[2] [Id., sec. 6.]
[3] [Id., secs. 8, 9, 11.]
[4] [Id., p. 2338.]
[5] [Clark *v.* Clark, 24 Barb. 581.]

real estate in the county. Judgments become liens when docketed.[1] The time during which a judgment creditor is stayed by injuction, appeal, or by express provision of law, from enforcing a judgment, is not a part of the ten years.[2]

The interest of a person holding a contract for the purchase of real estate is not bound by the docketing of a judgment, and can not be levied upon or sold by virtue of an execution issued upon the judgment.[3]

Where real property is sold, and, at the same time, a mortgage is given to secure the payment of the purchase money, the lien of a mortgage upon the property is superior to the lien of a previous judgment against a purchaser.[4]

The party recovering a final judgment, or his assignee, may have execution thereon within five years after the entry of the judgment.[5] After the lapse of five years from the entry of a final judgment, execution can be issued in one of the following cases only: 1. Where an execution was issued within five years after the entry of a judgment, and returned wholly or partly unsatisfied. 2. Where an order is made by the court, granting leave to issue an execution.[6]

[1] [N. Y. Code of Civil Procedure, secs. 1250, 1251.]
[2] [Id., sec. 1255.]
[3] [Id., sec. 1253.]
[4] [Id., sec. 1254.]
[5] [Id., sec. 1375.]
[6] [Id., sec. 1377.]

Judgments before justices of the peace are not a lien on, and can not be enforced against, real property, unless for $25 or more, exclusive of costs. A justice of the peace may issue execution at any time within five years after entry of judgment, unless it has been docketed in the county clerk's office. When a transcript of a justice of the peace is filed with the county clerk, it becomes a lien, as does the docketing of a judgment in another county.[1]

The docket of a judgment must be discharged by the clerk in whose office the judgment roll is filed, upon filing with him a satisfaction piece. A satisfaction piece must be executed by the party in whose favor the judgment was rendered, or his executor or administrator; or, if made within two years after filing the judgment roll, by the attorney of record of the party. If the judgment is assigned and the assignment is filed, the satisfaction piece is executed by the assignee, his executor or administrator. If by an attorney in fact, then the instrument containing the power must be filed with the satisfaction piece, unless recorded already. The execution of each satisfaction piece or power of attorney must be acknowledged before the clerk or deputy and certified by him, or acknowledged and certified in like manner as a deed, and recorded.[2]

Judgments on arbitrations have the same force,

[1] [Code of Civil Procedure, secs. 3017, 3022, 3024.]
[2] [Id., sec. 1260.]

and are subject to the same provisions, as judgments in actions.[1]

Uncollected fines of jurors in New York City, and in New York and King's counties, when docketed, may be enforced as judgments, beings liens upon the real property of the person fined.[2]

4. *Lis pendens.*—Notice of the pendency of an action must be filed in the clerk's office, when the action affects real estate. Such notice may be filed with the complaint before service of summons; but in that case, personal service of the summons must be made upon defendant sixty days after filing notice, or else, before the expiration of the same time, publication of the summons must be commenced or service made, or service made without the state. Where the defendant sets up a counter claim, a similar notice of *lis pendens* may be given.[3]

5. *Redemption.*—Lands may be redeemed within one year from the sale of real estate by paying to the purchaser, his executor, administrator, or assignee, the sum of money paid upon the sale, with interest from the day of sale at the rate of ten per cent. Redemption may be made either by the judgment debtor, whose right and title were sold, or by his heir, devisee, or grantee. Creditors may redeem within three months after the expiration of the year.[4]

[1] [Code of Civil Procedure, sec. 2380.]
[2] [Id., secs. 1117, 1156.]
[3] [Id., secs. 1670–1673.]
[4] [Code of Civil Procedure, secs. 1446–1449.]

6. *Mortgages.*—Mortgages are void as against subsequent purchasers in good faith whose conveyance is first duly recorded.[1]

No mortgage is construed as implying a covenant for the payment of the sum intended to be secured, unless there is an express covenant to that effect. The remedies of the mortgagee in such case are confined to the land mentioned in the mortgage.[2]

A mortgage is discharged by the officer on receiving a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved, and certified. Such certificate must be recorded.[3]

Deeds absolute in terms, though intended as mortgages, are considered as mortgages.[4] The recording of the assignment of a mortgage in not deemed in itself notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them to the mortgagee.[5]

7. *Leases.*—Leases for a longer period than one year must be in writing.[6]

Leases for life must be subscribed and sealed. If not duly acknowledged previous to delivery, their execution must be attested by at least one witness.

[1] [R. S., vol. 3, p. 2215.]

[2] [Id., p. 2195, sec. 139.]

[3] [Id , p. 2220, secs. 28, 29.]

[4] [Id., p. 2216, sec. 3. The intention must appear by some other instrument in writing.]

[5] [Id., p. 2222, sec. 41.]

[6] [Id., p. 2326, sec. 8.]

If not so attested, they shall not take effect against a purchaser or incumbrancer until so acknowledged.[1]

A special power may be granted to a tenant for life to make leases for not more than twenty-one years, and to commence in possession during life. This power is not assignable as a separate interest, but is annexed to his estate, and passes unless specially excepted.[2]

A building destroyed or injured by the elements or any cause so as to be untenantable, exempts the lessee from rent, unless otherwise expressly provided.[3]

The grantees of demised premises or the reversion thereof, the assignees of the lessors, and their heirs and personal representatives, grantees, and assigns, have the same remedies, by entry, distress, or otherwise, for the non-performance of agreements, as the grantors or lessors.[4] And so the lessees and assigns have the same remedies against the lessor, his grantees, assigns, and their representatives, for the breach of any covenant, as the lessee might have had against his immediate lessor, except covenants against incumbrances or relating to the title or possession of the premises demised.[5]

[1] [R. S., vol. 3, p. 2194, sec. 137. The provision with reference to the recording of leases for life or for years is not extended to the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware, and Schenectady. Id., p. 2222, sec. 42.]

[2] [R. S., vol. 3, p. 2190, secs. 87, 88.]

[3] [Id., p. 2203, sec. 1.]

[4] [Id., sec. 23.]

[5] [Id., sec. 24.]

8. *Decedent's debts.*—The conveyance of real estate does not affect the title of a purchaser or mortgagee in good faith from the heir or devisee of decedent, unless administration is granted upon petition within four years after his death. The grantee takes free from any claim of the widow for dower, which is not assigned to her, but subject to subsisting charges thereon by judgment, mortgage, or otherwise, which exist at the time of his death.[1]

9. *Mechanics' liens.*—In all counties, except King's, Queen's, New York, Onondaga, Rensselaer, and the city of Buffalo, persons performing labor in erecting or repairing any house, building, or appurtenance to any house, building, or building lot, including fences, sidewalks, pavements, wells, fountains, fish-ponds, fruit and ornamental trees, and every improvement whatever made upon the same, have a lien on the building, lot, etc. Their claims must be filed within sixty days from the performance of the labor in the clerk's office in the county where the property is located. The lien continues until the expiration of one year, and if proceedings are commenced within the year, until judgment is rendered, and one year thereafter. The action may be commenced in the supreme court of the county (after filing notice) in which the property is situated, or in the county court, when the amount exceeds fifty dollars. When the amount of the lien is two hundred dollars or under, the action may be commenced before a jus-

[1] [N. Y. Code Civil Procedure, secs. 2777, 2778.]

tice of the peace of the town or city in which the premises are located.[1]

In New York city and county, persons performing labor upon, or furnishing materials to be used in the construction, alteration, or repair of any building, vault, wharf, fence, and any other structure, shall have a lien on the same, and also for grading, filling in lots, sidewalks or streets in front of such lots. These liens have precedence over those taken by an original contractor, and the liens of laborers, mechanics, or other persons furnishing materials to any contractor or subcontractor, take precedence of liens of contractors, and are preferred to any lien or other incumbrance of which the lien holder had no notice, and which was unrecorded at the time of filing the claim.[2] The claim must be filed with the county clerk within sixty days by the original contractor, and by other persons within thirty days from the completion of the contract, and continues for ninety days thereafter. Unless an action is brought within the ninety days after filing the claim, and notice of the pendency of the action is filed with the county clerk, the lien ceases.[3]

In King's and Queen's counties, the contractor or subcontractor must serve notice upon the county clerk, specifying the amount claimed, etc., within three months after the performance of the labor, a copy of which must be served on the owner. The lien continues for one year.[4]

[1] [R. S., vol. 3, pp. 2411–2413.]
[2] [Id., p. 2418, secs. 1, 2, 4.]
[3] [Id., secs. 5, 8.]
[4] [Id., pp. 2421–2423.]

In Rensselaer county, notice in writing must be served upon the town clerk, and if the property is located in a city, upon the clerk of the county, within thirty days after the performance of the labor. When filed, notice must be served upon the owner or his agent, personally, within five days thereafter. The lien continues for five years.[1]

In Onondaga county, persons performing labor, etc., to the amount of twenty dollars, shall have an equitable lien upon the property for three months. As against the owner, no notice is necessary. As against all other persons, notice of the claim must be filed within three months after the labor is performed with the clerk of the county.[2]

In Buffalo city, original contractors must, within four months after the completion of their contract, and all others within sixty days, file their claims with the county clerk of Erie county. All persons except the original contractor must serve a copy of such claim upon the owner within ten days after filing his claim with the county clerk. The lien continues for one year after the claim is filed, unless within that time an action is commenced, and notice of its pendency is filed with the county clerk.[3]]

[1] [R. S., vol. 3, pp. 2424–2428.]

[2] [Id., p. 2429.]

[3] [Id., p. 2431, secs. 5–8. Mechanics' liens on public works in the cities of the State of New York, are created by filing the claims within thirty days after completion of labor, and commencing an action within ninety days, and filing notice of its pendency with the financial officer of the city.

OHIO.

SEC. 113. 1. *Taxes*—due the state are a lien on all real property subject to such tax, from the day preceding the second Monday of April, annually, which continues until the tax is paid.[1] Agents, guardians, and executors paying taxes, have a lien on the land for such payments.[2] Lien holders paying taxes to preserve their liens, acquire, to the extent of the payment, a lien preferable to all other liens.[3] Purchasers of tax titles have a lien, in case of redemption, or in case of the failure of the tax title, for all taxes paid, interest, penalties, and improvements *bona fide* made.[4]

2. *Dower.* In Ohio, the widow is dowable of one-third of all lands of which her husband was seized as an estate of inheritance at any time during the coverture, and, upon the termination of the prior estate, of all lands held by him at his decease in fee

Id. pp. 2436, 2437. The provisions of the act apply to work on wharves, piers, bulkheads, and bridges. Id., p. 2439, sec 1. Laborers on railroads also have a lien on the road by filing their claims within thirty days after the performance of their labor. The lien continues for one year, and when judgment is obtained, it is a lien upon the railroad and the realty to the extent of other judgments. Id., p. 2439. Laborers on oil wells must file their claims within sixty days after the performance of their contract, which continues for six months from the time of filing notice; and if action is brought and judgment rendered, one year thereafter, or one year after the determination of an appeal. Id., p. 2440.]

[1] [R. S. Ohio, sec. 2838.]

[2] [Id., sec. 2851.]

[3] [Id., sec. 2853.]

[4] [Id., secs. 2880, 2896.]

simple, in remainder, or in reversion, and of all lands which the husband at the time of his decease held by bond, article, lease, or other evidence of claim.[1] The right to dower is forfeited if the wife elopes with a paramour,[2] or is divorced for her own misconduct;[3] and is barred by a jointure, legal or equitable,[4] and by her uniting with her husband as grantor in a deed of his lands.[5] She is not dowable of lands purchased with partnership funds for partnership purposes, nor, as against the vendor of lands, the purchase money of which is unpaid.[6]

3. *Curtesy.*—The common law estate by the curtesy of England, which entitled the husband upon the birth of issue, alive and capable of inheriting the estate, to the rents and profits of the wife's lands for his life, has been modified by statute. The right of the husband to dispose of the rents and profits, by making leases or creating incumbrances, is altogether taken away during the life of the wife, and the life of the issue of her body; nor, during that period, can the estate be taken in execution for the debts of the husband;[7] and the husband's right is perfect by the marriage alone, irrespective

[1] [R. S. Ohio, sec. 4188.]
[2] [Id., sec. 4192.]
[3] [Id., sec. 5700.]
[4] [Id., sec. 4189.]
[5] [Id., sec. 4107; 80 O. L. 79.]
[6] [Id.; Greene *v.* Greene, 1 Ohio, 535; Welch *v.* Buckins et al., 9 Ohio St. 331.]
[7] [R. S. Ohio, sec. 3108.]

of the birth of issue.[1] It is liable to forfeiture for non-payment of taxes.[2]

4. *Judgments and executions.*—The judgments of the circuit court of the United States are liens on all lands of the judgment debtor within the district.[3] The lands of the debtor within the county where the judgment of the state courts of record is entered, are bound from the first day of the term at which judgment is rendered, except judgments by confession and judgments rendered at the same terms at which an action is commenced, which bind the lands only from the day on which the judgments are rendered. All other lands are bound from the time they are seized in execution.[4] Permanent leaseholds, renewable forever, are bound in like manner as estates in fee.[5] The judgment remains, as against all other persons than judgment creditors, a lien for five years from the date of the judgment, and, by the issuance of successive executions, may be kept alive, from five years to five years, forever.[6] Between judgments against the same debtor, rendered at the same term, there is no preference, if executions are issued thereon within ten days after the term.[7] No judgment on

[1] [Harkness *v.* Corning, 24 Ohio St. 416.]
[2] [R. S. Ohio, sec. 2852.]
[3] [Lawrence *r.* Belger, 31 Ohio St. 175.]
[4] [R. S. Ohio, sec. 5375.]
[5] [Northern Bank of Ky. *v.* Roosa et al., 13 Ohio, 335.]
[6] [R. S. Ohio, sec. 5380.]
[7] [Id., sec. 5382.]

which execution has not been taken out and levied before the expiration of a year next after its rendition, operates as a lien to the prejudice of any *bona fide* judgment creditor.[1] The junior judgment creditor will, in such cases, by levying first, obtain priority.[2] If the cause is removed to an appellate court, the lien is preserved until a year after the first day of the term of the court of common pleas to which the special mandate to carry the judgment into effect may be directed, or, if the mandate be entered on the journal in vacation, after it is so entered.[3] Where the omission to take out execution and levy is occasioned by an appeal, writ of error, injunction, or a vacancy in the office of the sheriff and coroner, or the inability of the officer, the time so covered shall be excluded.[4] Executions may issue from any court of record to any county in the state.[5] Levies made under such writs, called, in Ohio, foreign executions, are entered on the foreign execution docket, in the office of the sheriff of the county to which they are directed. The entry of a levy in this book is notice to mankind. The lands are bound by the levy. A judgment of the supreme court for money binds the lands of the debtor within the county in which the suit originated, from the first day of the term at which the judgment is entered, and all other

[1] [R. S. Ohio, sec. 5415.]
[2] [Schuee et al. *v.* Ferguson et al., 3 Ohio, 136.]
[3] [R. S. Ohio, sec. 5415.]
[4] [Id., sec. 5415.]
[5] [Id., sec. 5372.]

lands from the time they are seized in execution, but the lien of a judgment of the common pleas court, in an action appealed to the district court and thence removed to the supreme court, is not divested, but continues till the final determination of the action in the supreme court. The lien of judgments of the probate courts against executors and administrators has the same operation as though rendered in the common pleas court.[1] Where a prisoner is convicted of an infamous offense, judgment is rendered against him for the costs of prosecution ;[2] on which, execution may issue against his lands. The statute does not in terms make the judgment, in such cases, a lien *per se*.[3] These provisions in respect to the liens of judgments, giving them effect by relation back to the first day of the term, and preserving them while the cause is pending indefinitely in the appellate tribunal, and while execution is stayed by injunction and supersedeas, obviously necessitate a much more extended search than the period of five years, within which, in ordinary cases, a judgment becomes dormant. The search begins with the order book in the circuit court of the United States, in which all judgments of that court are minuted. If the court is then holding a term, search must be made for all the pending cases against the seller of the land. The search is then

[1] [R. S. Ohio, secs. 1212, 5376, 6197.]

[2] [Id., secs. 6799, including a jury fee of $6.00.]

[3] [Id., sec. 7333.]

transferred to the office of the clerk of the court of common pleas of the county. The judgment index and the execution docket, in that office, will show all judgments and executions in that court for full five years back. Unless the search is made in vacation, the appearance docket must also be searched for all pending causes; for, if any of them come to judgment during that term, it will overreach the prior conveyance made since the term began. This search is necessary also for the purpose of ascertaining what judgments of justices of the peace have been docketed. The records of the superior court require the same scrutiny.[1] The district court is a regular trap to catch purchasers and mortgagees. Causes coming there, from the common pleas, may remain ten or twelve years, and the lien acquired by the judgment below remaining in full force, there is no protection against it, except by searching through all the pending cases, and then going back from the present time as many years as may reasonably cover the time within which a cause may have been decided there, and have gone to the supreme court, been there decided and remanded to the common pleas. An old litigated case hardly fails, for want of such precautions, to catch somebody with its overreaching lien. The purchaser himself is to blame for it. These laborious and hazardous searches make no show in the abstract, and he is very unwilling to pay for what does not appear. When

[1] [The modern system of indexing in the large cities, enables the searcher to examine the records of the courts, as far back as any case would require without much labor.]

judgments are found, the abstract should state the court, the term, the names of the parties, the exact amount in dollars and cents, the day from which interest is to be computed, the costs, and the date of the last execution; that no new reference need be had to the records, if it is proposed to pay them off; or, if paid off, to cancel them of record. Judgments are rarely marked satisfied, except on some such occasion as a sale of the land. The foreign execution docket, in the sheriff's office, will show all writs of execution in his hands from other counties.

5. *Judicial proceedings.*—Attachments may be issued by courts of record, to any county in the state, and levied on the lands of the defendant, which are thereby bound from the time of service.[1] The existence of an attachment may be ascertained in the county where the suit is brought, by searching the pending cases in the clerk's office, and, in other counties, by searching the sheriff's docket. Attachments issued by justices of the peace can not be levied on lands.[2] Attachments are allowed as of course against non-resident defendants, and, on affidavits, against fraudulent and absconding debtors.[3]

6. Decedents' debts are a lien on the lands of their estates, until paid.[4] A search must, therefore,

[1] [R. S. Ohio, secs. 5525, 5538.]

[2] [Id., sec. 6491.]

[3] [Id. secs. 5521, 5522.]

[4] Ramsdall *v.* Craighill, 9 Ohio, 197; Bank of Muskingum *v.* Carpenter, 7 Ohio, i. 21; Stiver *v.* Stiver, 8 Ohio, 217; Piatt *v.* St. Clair, 6 Ohio, 227.

be made in the administration docket of the probate court of the county, to ascertain if the estate has been finally settled. An entry finally discharging the executor, though in strictness necessary, is not common in practice.

7. *Trustees' expenses.*—The expenses and disbursements of a trustee and his compensation, and those of agents, executors, and guardians, are a lien on the trust land, both by the ordinary doctrine of equity and by statute.[1]

8. *Purchase money liens.*—The doctrine upon this subject, which was stated in the last section, is the law of Ohio.[2]

9. *Lis pendens.*—In the circuit court of the United States, the pendency of a suit precluding any change of ownership of the land sought to be charged or affected by the proceeding, except in subordination to the legal or equitable rights of the complainant, dates from the time of the service of the subpœna. In the state courts, the pendency of the suit, subsequent to July 1st, 1853, dates from the issuance of the summons, if service is afterward obtained within sixty days.[3]

[1] Hill on Trustees, 567; Lewin on Trusts, 560 [R. S. Ohio, sec. 2851; Andrews' Ex'rs *v.* Andrews' Adm'rs, 7 Ohio St. 143, 151].

[2] Jockman *v.* Hallock, 1 Ohio, 318; Brush *v.* Adams, 14 Ohio, 21; Boos *v.* Ewing, 17 Ohio, 500; Follett *v.* Reese, 20 Ohio, 546.

[3] Ludlow *v.* Kidd, 3 Ohio, 541; Bennet *v.* Williams, 5 Ohio, 461; Hamlin *v.* Bevans, 7 Ohio, i. 161; Trimble *v.* Boothby, 14 Ohio, 109; Irvin *v.* Smith, 17 Ohio, 226; Ohio [R. S., secs. 4987, 4988.]

10. *Landlord's lien.*—There is no law of distress in Ohio; but the right of the landlord to his share of the growing crops is preserved.[1]

11. *Foreign wills.*—The law upon this subject is stated in the chapter on Wills. There is no protection against the production of a foreign will creating charges on the land or divesting the title of the heir at law, within the four years allowed to probate it here, except external inquiries.[2]

12. *Mortgages.*—Mortgages are executed with the same formalities as deeds.[3] They have priority from the time that they are filed for record in the recorder's office, without regard to the time of execution. The ordinary doctrine of equity that notice of a prior unrecorded mortgage postpones the second mortgagee, is excluded by statute. The record alone settles the priorities in case of mortgages of real property.[4] In case of chattels, the rule is different.[5] Mortgages may be canceled of record by the entry of satisfaction, or a receipt for the same, either on the mortgage or on the record of the mortgage, which is written in the margin of the record.[6]

13. *Leases.*—Leases for a term not exceeding three years, in writing merely, without attestation, acknowledgment, or recording, are good; as are also

[1] Case *v.* Hart, 11 Ohio, 364.

[2] [R. S. Ohio, sec. 5967.]

[3] [Id., sec. 4106; 80 O. L. 79.]

[4] [Id., sec. 4133; Bercaw *v.* Cockerill et al., 20 Ohio St. 163.]

[5] [Id., secs. 4150–4153; Paine *v.* Mason, 7 O. St. 198.]

[6] [Id., sec. 4135.]

leases of school or ministerial lands, for any term not exceeding ten years.[1] Parol leases for less than three years, though clearly invalidated by the statute of frauds, are held good when possession has been delivered solely in consequence of the leases.[2] There is also a decision, the effect of which is commonly understood to be, that a tenant holding over after the expiration of his term, with the landlord's implied consent, is to be construed as holding for the same length of time as the original letting;[3] a doctrine which, if re examined, would not, probably, in view of the words of the statutes of frauds and forcible detainer, be supported. Permanent leaseholds, renewable forever, descend to the heir.[4] Leases are recorded separately by themselves in the recorder's office. In abstracting them, the length of the term, the amount of the rent, and the clauses of forfeiture, require special attention. If a leasehold is the subject of purchase, the searcher must be careful to see that no mortgage precedes it, for the mortgagee has it in his power to compel the tenant either to pay him the rent or vacate the premises.[5] An unexpected liability often arises on

[1] [R. S. Ohio, sec. 4112.]

[2] Wilbur *v.* Paine, 1 Ohio, 256; Armstrong *v.* Kattenhorn, 11 Ohio, 265; [Grant *v.* Ramsey, 7 Ohio St. 158.]

[3] Moore *v.* Beasley, 3 Ohio, 294; [see Worthington *v.* Globe Rolling Mill, Sup. Ct. Cincinnati, 6 Cin. Law Bull. 235; 9 Am. Law Record, 693.]

[4] [R. S. Ohio, sec. 4181.]

[5] Keech *v.* Hall, 1 Smith's L. C. 879–899; Doe *v.* Mace, 7 Blackford, 1; Evans *v.* Elliot, 1 Perry & Dav. 264; Hughes *v.*

the part of the tenant from the existence of unconditional covenants to pay rent or make repairs. The rule of law is, that parties are understood to make their own bargain, and not to intend exceptions where none are expressed. The accidental destruction of the premises will not, therefore, exonerate the tenant from the duty of paying the stipulated rent, or making the stipulated repairs, or restoring the property in the condition in which it was let to him.[1] A mortgagee of a leasehold, who takes possession under his mortgage, is liable thenceforth for the rents to the original landlord, as assignee in possession.[2]

14. *Liens of mechanics and material men.*—Any person who performs labor or furnishes materials or machinery for erecting any building or appurtenance, by virtue of a contract with the owner, has a lien on the building or appurtenance, and the lot of land on which it stands, if, within four months from the time of performing the work or furnishing the materials or machinery, he files his claim

Edwards, 9 Wheaton, 495; Knaub *v.* Esseck, 2 Watts, 282; 1 Platt on Leases, 170; Pope *v.* Biggs, 9 Barn. & Cress. 245.

[1] Linn *v.* Boss, 10 Ohio, 412; 2 Platt on Leases, 119; Baker *v.* Holtprafell, 4 Taunton, 45; 18 Vesey, 115; Leeds *v.* Cheetam, 1 Simons, 146; Phillips *v.* Stevens, 16 Mass. 238; Mill Dam Foundry *v.* Hovey, 21 Pick. 417. [This rule has been altered by statute. R. S. Ohio, sec. 4113.]

[2] Astor *v.* Miller, 2 Paige, 68; 2 Platt on Leases, 423; Williams *v.* Bosanquet, 1 Brod. & Bing. 238; Burton *v.* Barclay, 7 Bing. 745 [Anderson *v.* Lanterman et al., 27 Ohio St. 104; but not where he is not in actual possession; Worthington *v.* Ballauf, Sup. Ct. Cin., Gen. Term, 7 Cin. Law Bull. 46].

in the office of the recorder of the county. Liens are recorded in separate volumes, called lien books The lien continues for two years from the date of filing the account. If an action is brought, the same continues in force until the final adjudication. There is no homestead or other execution as against any mechanic's lien.[1]

Persons performing labor or furnishing material for constructing, altering, or repairing any street, turnpike, road, sidewalk, way, drain, ditch, or sewer, by virtue of private contract between him and the owner of lands abutting thereon, or his authorized agent, have a lien against the lands. The claim must be filed within four months from the time of performing the labor, etc., and continues for one year from the filing of the account.[2] Laborers and material men on railroads must file their claims with the recorder of the county, within forty days from the date of performing the labor, etc., and serve notice in writing upon the secretary or other officer, within ten days thereafter; otherwise they will be held to have waived their lien.[3]

15. *Liens created by city ordinances.*—Liens may be created by city ordinances on the lands of railroad companies for the expense of lighting the track; on city lots for the expense of raising, filling, or draining, or removing nuisances therefrom; for all charges authorized to be made by the municipal corporation act; for the purchase, erection, and

[1] [R. S., secs. 3184, 3185.]
[2] [Id., secs. 3186, 3187.]
[3] [80 O. L. 99.]

extension of water works; for the opening, widening, repairing, and lighting streets, wharves, market places, sewers, etc;[1] and grading, curbing, and paving streets in cities of the first grade, second class,[2] and repairing and constructing sidewalks.[3]

Some of these liens date from the passage of the ordinance, and some from the time of the assessment. Search must be made in the office of the city clerk for ordinances creating liens.

16. *Occupying claimant's lien.*—The right of a person holding under a plain and connected title, derived from the records of some public office, and whose title has been found defective, to retain possession until paid for his lasting and permanent improvement, is in the nature of a lien.[4]

17. *Roads.*—The existence of unopened roads, legally established, may seriously affect the value of the property. The road records are kept in the office of the commissioners of the county.

18. Mutual insurance companies incorporated in Ohio have a lien on the premises insured to secure the amount of the premium note.[5]

PENNSYLVANIA.

[SEC. 114. 1. Taxes due the state are a lien, and

[1] [R. S., secs. 2498, 2393, 2262, 2285, 2430, 2431.]

[2] [Id., sec. 2359.]

[3] [Id., sec. 2330.]

[4] [Id., secs. 5786–5796.]

[5] [Id., sec. 3063. The lien shall not take effect until the company files with the recorder of the county a certificate stating the date, number, and amount of note, and a description of the property.]

bear interest from the time they are due.[1] Within the city and county of Philadelphia, taxes registered in the county commissioners' office are a lien for five years from the first day of January in the year succeeding that in which they become due; and, if judgment be thereafter obtained upon them, the judgment is a lien as in other cases of judgments.[2] Taxes due on collateral inheritances are liens until paid.[3]

2. *Debts due to the state.*—Balances found due by the auditor general on public accounts to the commonwealth, are a lien from the date of the settlement of the account, on all the real estate of the debtors and of their sureties throughout the commonwealth.[4] The report of a county auditor, filed in the court of common pleas, of a debt due by an officer to the commonwealth or county, is a lien from the filing of the report.[5] Purchase money due to the public land office is a lien on the land sold.[6] The official recognizances given by sheriffs and coroners for their good conduct in office, and which are docketed in the office of the prothonotary of the court of common pleas of the proper county, are liens on all the real estate of the sher-

[1] [Brightly's Purd., p. 1389, sec. 186.]

[2] [Id., p. 1086, sec. 8. Except in cities of the first, second, and fourth classes, they are a first lien for two years from the 1st of July next after they are returned. Laws 1881, p. 45.]

[3] [Id., p. 216, sec. 7.]

[4] [Id., p. 1188, sec. 22.]

[5] [Id., p. 301, sec. 16.]

[6] [Id., p. 909, sec. 96.]

iffs and coroners and their sureties.[1] Judgments rendered in Dauphin county in favor of the commonwealth against defaulters, and certified to the court of common pleas of the county in which the lands lie, are liens on the land there.[2]

3. *Dower.*—The act of April 8th, 1833, abolished the common law estate of dower in Pennsyvania.[3] The claim of the widow to a distributive share of her husband's estate does not exist in lands sold under judicial proceedings, nor in those sold by the husband,[4] or otherwise limited by marriage settlement.[5]

4. *Curtesy.*—Marriage gives the husband no rights in his wife's lands. He can not incumber them, except she unites with him in the conveyance or gives her consent by deed. This acknowledgment or consent of the wife, if taken out of the state and within the United States, may be taken by any judge of any court of record.[6]

5. *Judgments and executions.*—The judgments of the circuit court of the United States are liens on all the lands of the defendant within the circuit.[7] Judgments of the supreme and district courts, and

[1] [Brightly's Purd., p. 1307, sec. 14.]

[2] [Id., p. 488, sec. 2.]

[3] [Id., p. 528, sec 2.]

[4] [Scott *v.* Crosdale, 2 Dall. 127.]

[5] [Borland *v.* Nichols, 12 Penn. St. 42.]

[6] [Brightly's Purd., p. 461, sec. 14; Id., p. 1005, sec. 13. "If the wife dies defore the husband, intestate, seized of an estate of inheritance, he will be entitled to enjoy the same during his life, in the same manner as a tenant by the curtesy consummate at common law." Gamble's Estate, 1 Pars. 489.]

[7] 7 Howard, 760

other courts of record within the county, indexed on the judgment docket, are liens upon all lands within the county from the day judgment is signed for five years from the first return day of the term of which such judgment may be entered.[1] Awards of arbitrators are liens for five years from the day on which the award was entered.[2] Judgments transferred from another county and docketed there, are a lien from the date of the docketing. Transcripts of the judgments of justices of the peace, entered on the prothonotary's docket, are liens from the date of the entry.[3] The filing of an inquisition of an execution against lands which lie in one or more adjoining tracts in different counties in the office of the prothonotary of the counties where the lands lie, is a lien from the entry.[4] In Philadelphia, city and county, lands acquired after the rendition of a judgment are not bound by it, unless the judgment is levied thereon, and the execution docketed on the judgment index of the court from which execution issued.[5] Judgments rendered in Dauphin county against public defaulters, and certified to the court of common pleas where the lands lie, have been already stated. Decrees for alimony entered in the judgment docket of the prothonotary of the court of common pleas, are liens.[6]

[1] [Brightly's Purd., p. 819, sec. 3.]

[2] [Id., p. 820, sec. 7. Awards may be transferred to any other court of common pleas by filing a certified copy of the whole record, which creates a lien. Sup., p. 2027, sec. 2.]

[3] [Id., pp. 821, 822, secs. 14, 16; Id., p. 863, sec. 100.]

[4] [Id., p. 653, sec. 92.]

[5] [Id., p. 647, sec. 61.]

[6] [Id., p. 513, sec. 25.]

Balances found due by an executor, administrator, guardian, or other accountant, on settlement with the orphan's court, docketed in the office of the prothonotary of the court of common pleas, create a lien for five years.[1] A sequestration from the orphan's court, docketed in like manner, is a lien from the date of the entry.[2] Decrees in equity are liens like judgments.[3]

6. *Judicial proceedings.*—Domestic attachments levied on land.[4] Foreign attachments against non-residents and foreign corporations, filed in the prothonotary's office, create liens from the time of execution.[5] Attachments on lands before justices of the peace, remain liens for sixty days after the time when the plaintiff might legally have had execution issued on the judgment. If the cause is appealed, they remain liens until sixty days after final judgment.[6]

7. *Decedent's debts.*—The debts of a deceased person are a lien on the lands of his estate for five years and no longer, unless an action be commenced thereon within the five years, or a copy or particular written statement of any bond, covenant, debt, or demand, where the same is not payable within the said period of five years, shall be filed within the said period of five years in the office of the prothonotary of the county where the real estate

[1] [Brightly's Purd., p. 446, sec. 201.]
[2] [Id., p. 1107, sec. 33.]
[3] [Id., p. 601, sec. 68.]
[4] [Id., p. 519, sec. 5.]
[5] [Id., p. 719, sec. 12.]
[6] [Id., p. 859, sec. 83.]

to be charged is situated, in which case it shall be a lien only for the period of five years after the bond, covenant, debt, or demand, becomes due. The expenses of administering the estate, and the compensation of the executor, are not thus limited.[1]

8. *Trustee's expenses.*—By the ordinary doctrine of equity, the expenses and disbursements of a trustee, in respect of a trust estate, constitute a lien on the trust property. It is assumed that this is the law of all the states, no statutory provision being made upon that subject.[2]

9. Ground rents, which are now regulated by statute.[3]

10. *Purchase money liens.*—The lien of the unpaid vendor of land on the land to secure the payment of the purchase money, against all persons taking with notice or without paying value, was noticed in section 51. This lien extends by statute, in Pennsylvania, to the case of money due the public land office; money due on the sale of entailed estates, and estates subject to ground rents, and to contingent remainders, which are sold under judicial decree, in accordance with the act of April 18th, 1853;[4] to money due on sales of land by order of the orphan's court,[5] and money due

[1] [Brightly's Purd., p. 422, sec. 88; Cobaugh's Appeal, 24 Penn. St. 143.]

[2] [Hill on Trustees, 567; Lewin on Trusts, 548.]

[3] [Brightly's Purd., p. 751, secs. 13–16.]

[4] [Id., p. 1244, sec. 5.]

[5] [Id., p. 1105, sec. 13.]

on the judicial completion of a decedent's contract for the purchase or sale of land.[1]

11. *Lis pendens.*—The pendency of an action which seeks to fasten a charge on land, to subject it to an equitable lien, or to divest the title of the defendants, is not notice in Pennsylvania, unless docketed on the ejectment index in the office of the prothonotary.[2]

12. *Landlord's lien on growing crops.*[3]

13. *Caveats*, to stop the issuing of a patent for land from the public land office.[4]

14. *Mortgages.*—Mortgages are executed with the same formalities as deeds. They have priority from the date of the record, without regard to the time of execution, except mortgages to secure the purchase money, which must be recorded within sixty days from their execution.[5] The lien of a mortgage is not affected by a sale on execution at the instance of subsequent claimants[6]. Mortgages are canceled by satisfaction being entered on the margin of the record.[7]

15. *Leases.*—Leases for twenty-one years, where

[1] [Brightly's Purd., p. 274, sec. 2.]

[2] [Id., p. 537, sec. 24.]

[3] [Id., p. 876, sec. 4.]

[4] [Id., p. 891, sec. 10.]

[5] [Id., p. 478, sec. 103. Defeasances must be in writing, signed, sealed, acknowledged, and recorded within sixty days from their execution. L. 1881, p. 84.]

[6] [Id., p. 486, sec. 139.]

[7] [Id., p. 484, sec. 127. Assignments must be noted in the mortgage. Sup., p. 2003, sec. 5.]

actual possession goes along with the lease, are not required to be recorded. Inquiry must, therefore, be made of tenants in possession as to the extent of their rights, as well as a search made for recorded leases.[1]

16. *Liens of mechanics, material men, and miners.*—Mechanics who perform labor on buildings, and material men who furnish materials, including plumbers, furnishers of curb-stones, grates, and furnaces, wharf builders, paper-hangers, and gas-fitters and furnishers, have a lien on the building and land from the time of the commencement of the building and for six months after the work is finished or the materials furnished, without filing any claim within that time.[2]

The current wages for the past six months of persons working for miners or mining companies, are a lien on the lands. The claims must be filed in the prothonotary's office in the county in which the real estate is situated within three months after the same becomes due, in the same manner as mechanics' liens.[3]

TENNESSEE.

[SEC. 115. 1. *Taxes.*—Taxes are a lien on the real estate, from January 10th of each year.[4]

2. *Dower.*—The widow is entitled to one-third of

[1] [Brightly's Purd., p. 473, sec. 78.]
[2] [Id., pp. 1026, 1027, 1033, sec. 44.]
[3] [Id., p. 1464, sec. 1.]
[4] [Act 1873, p. 176, sec. 26.]

all the land of which the husband died seized, or of which he was equitable owner.[1]

The right of dower is postponed to the lien of a vendor for purchase money.[2]

3. *Curtesy.*—The interest of the husband in the wife's land can not be disposed of by judgment, or otherwise, during her life, unless she joins in the conveyance.[3] The husband is not liable for the antenuptial debts of the wife.[4]

4. *Judgments and executions.*—Judgments are liens from the date of their rendition.[5]

Judgments of the federal courts bind the real estate in the county in which the court sat when it rendered judgment.[6]

When judgments are rendered in any other county than that in which the debtor resides, the lien takes effect from the time a certified copy of the judgment or decree is registered in the county where the debtor resides, if he resides in the state, but, if not, then in the county where the land lies.[7]

The lien is lost unless execution is taken out and the land sold within twelve months after the rendition of the judgment.[8]

[1] [Laws, 1871, sec. 2398.]
[2] [Id.; Williams *v.* Dawson, 3 Sneed, 316
[3] [Id., sec. 2481.]
[4] [Acts 1877, p. 104.]
[5] [Laws 1871, sec. 2980.]
[6] [Vance *v.* Johnson, 10 Humph. 214.]
[7] [Laws 1871, sec. 2981.]
[8] [Id., sec. 2982.]

Where the sale is prevented by injunction, writ of error, appeal, or other adverse proceeding, the lien is continued, provided an execution is issued and land sold within one year after the injunction is dissolved, or the judgment or decree affirmed.[1]

The judgment or decree does not bind the equitable interest of the debtor in the estate, unless within sixty days from its rendition a memorandum of the judgment or decree, stating the amount and date thereof, with the names of the parties, is registered in the register's office of the county where the real estate is situated.[2]

As between creditors, the lien of judgments rendered on different days of the same term relates back to the first day of the term.[3] As between a creditor and a purchaser, or a stranger, the lien attaches only from the date of the rendition of the judgment.[4]

The lien attaches to such lands acquired by the defendant, after the rendition of the judgment, as may be levied on and sold within the time limited by the statute,[5] and such as the debtor acquires after the expiration of twelve months, and continues for a period of one year from the time it attaches.[6]

When execution issued by a justice of the peace is levied on real estate, he must return it

[1] [Laws 1871, sec. 2983.]
[2] [Id., sec. 2984.]
[3] [Porter *v.* Earthman, 4 Yerg. 358.]
[4] [Murfree *v.* Carmack, 4 Yerg. 270.]
[5] [Greenway *v.* Cannon, 3 Humph. 177.]
[6] [Chapron *v.* Cassaday, 3 Humph. 661.]

with the judgment and the papers, to the next circuit court of his county, for condemnation.[1]

A creditor has a lien upon the property from the filing of his bill, and may acquire a lien from the rendition of the decree by causing a memorandum thereof, within sixty days from its rendition, to be registered, and filing his bill within thirty days from the return of the execution unsatisfied.[2] Penalties incurred for the exercise of any privilege, without license, are a lien.[3]

5. *Vendor's lien.*—The vendor of the land, as each payment becomes due, may bring his suit to enforce his lien, and may have so much of the land sold as may be necessary to pay the money then due.[4]

6. *Growing crops.*—The landlord has a lien on the growing crop. Any debt, note, or account created for the rent, is a lien on the growing crop. The lien continues for three months after the debt becomes due, and until the determination of any suit commenced within that time.[5]

The landlord has a lien on the growing crop for supplies of food and clothing furnished to enable tenant to grow the crop.[6]

7. *Mortgages and trust deeds*—take effect as against

[1] [Laws 1871, sec. 3080.]
[2] [Id., sec. 4286.]
[3] [Id., sec. 5565.]
[4] [Id., sec. 3563.]
[5] [Id., secs. 3539, 3540.]
[6] [Act 1875, p. 206.]

persons not having actual notice, from the time of being filed for record.[1]

8. *Leases.*—Leases for more than three years from the time of their execution must be recorded.[2] Those for more than one year must be in writing.[3]

9. *Redemption.*—Real estate sold for debt may be redeemed at any time within two years after such sale: 1. Where it is sold under execution; 2. Under any decree, judgment, or order of court of chancery; 3. Under a deed of trust or mortgage, unless the right is expressly waived; 4. Where it is sold for taxes.[4]

10. *Mechanics' liens.*—Mechanics have liens upon any lot of ground upon which a house is constructed, built, or repaired, or fixtures or machinery furnished or erected, or improvements made by special contract with the owner or agent. If the contract be made with a mortgagor, and the mortgagee has written notice before the work is begun or materials furnished, and consents thereto, the lien has priority over the mortgage, and, if he fails to object within ten days after receipt of the notice, his consent shall be implied. The lien continues for one year after the work is performed, etc., and binds the land, though the owner may dispose of the same.

Journeymen and persons employed by mechanics, founders, or machinists, have a lien if at the time they begin work, etc., they notify, in writing,

[1] [Laws 1871, sec. 2072.]
[2] [Id., sec. 2030.]
[3] [Id., sec. 1758.]
[4] [Id., sec. 2124.]

the owner of the property of their intention to rely upon the lien. Such lien is enforced by attachment, either in law or equity.[1]

The lien of mechanics, foundry men, and machinists may be enforced by a suit before a justice of the peace for all sums within the justice's jurisdiction, and, when an attachment has been levied, judgment rendered, and execution issued, the papers must be returned to the circuit court, to be proceeded upon as in other cases of levy by justice's execution on lands. An abstract of the judgment, within twenty days after its rendition, must be filed in the office of the register of the county in which judgment is rendered.[2]

WISCONSIN.

SEC. 116. 1. *Taxes.*—Taxes are a lien on land until paid.[3]

2. *Dower.*—The widow is entitled to one-third of the land of which the husband was seized of an estate of inheritance at any time during marriage. She is not entitled to dower in land mortgaged to secure the purchase money, as against the mortgagee or those claiming under him, although she did not unite in the mortgage, but is entitled to dower as against all other persons.[4]

[1] [Laws 1871, sec. 1981–1987.]
[2] [Id., sec. 3547, 3548.]
[3] [R. S. 1878, sec. 1088.]
[4] [Id., secs. 2159, 2163.]

3. *Curtesy.*—The husband is entitled to hold the lands of which the wife died seized, and which were not disposed of by will, for his life; but if the wife left issue of a former husband to whom the estate might descend, such issue takes the same discharged of the right of the husband as tenant by the curtesy.[1]

4. *Judgments and executions.*—Judgments are a lien on the lands for ten years from the date of their rendition. Executions may issue within five years after the rendition of the judgment. If no execution issues within five years, it can only be issued upon leave granted by the court, when it is made to appear that the judgment, or some part of it, remains unsatisfied. In no case can an execution be issued, or any proceedings be had, under a judgment after twenty years from the time of the rendition.[2] Transcripts of judgments of justices are deemed judgments of the circuit court when filed therein.[3]

When judgments are entered on the docket as satisfied, they cease as liens. Transcripts of such satisfaction filed in other counties with the circuit court of the county, have the same effect as when originally entered.[4]

5. *Judicial proceedings.*—An attachment binds the lands of the debtor from the time of the filing

[1] [R. S., 1878, sec. 2180.]
[2] [Id., secs. 2902, 2968.]
[3] [Id., sec. 2900.]
[4] [Id., secs. 2912, 2913.]

of a copy of the original writ in the office of the register of deeds.[1]

6. *Lis pendens.*—Notice of the pendency of an action must be filed with the register of deeds of the county where the land is situated. If the action be for the foreclosure of a mortgage, it must be filed twenty days before judgment. A defendant setting up affirmative matter may file a like notice.[2]

7. *Mortgages.*—Mortgages are notice from the time of being filed for record.[3] Record of the assignment of a mortgage is not deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them to the mortgagee.[4]

Satisfaction of a mortgage is entered in the general index and on the margin of the record. It must be signed by the mortgagee, his personal representative or assignee, in the presence of the register of deeds, who subscribes the same as a witness. A certificate by the mortgagee, his personal representative or assignee, acknowledged and certified, has like effect.[5] A lien is created by a deposit of title deeds in the nature of an equitable mortgage.[6]

[1] [R. S. 1878, sec. 2737.]
[2] [Id., sec. 3187.]
[3] [Id., sec. 2241.]
[4] [Id., sec. 2244.]
[5] [Id., secs. 2247, 2253.]
[6] [Jarvis *v.* Dutcher, 16 Wis. 307.]

8. *Decedent's debts.*—Real estate descended to any heir or devisee and aliened to a *bona fide* purchaser before notice of action filed, or before final judgment is docketed, is not liable to execution on any such judgment.[1]

9. *Vendor's lien.*—The vendor has a lien for the payment of purchase money.[2]

10. *Mechanics' liens.*—For constructing or repairing buildings, wharves, filling water lots, dredging channels, digging or constructing wells or fountains, building or repairing fences, liens are acquired.

Subcontractors acquire a lien on giving notice in writing, if any thing is due contractor, within thirty days after performing labor, etc., to the owner, or his agent, of the property to be affected by such lien. These liens continue for six months from the date of the last charge for performing such work; the claim therefor must be filed in the office of the clerk of the circuit court of the county, and an action brought within one year from that time.[3]

The taking of a promissory note or other evidence of indebtedness for such work or materials will not discharge the lien, unless expressly received as payment.[4]]

[1] [R. S., sec. 3285.]
[2] [Willard *v.* Reas, 26 Wis. 540.]
[3] [R. S. 1878, secs. 3314–3318.]
[4] [Id., sec. 3317.]

CHAPTER VII.

OF THE SEARCH OF JUDICIAL RECORDS AND ABSTRACTING THEM.

117. What title is acquired at judicial sales.—118. The indispensable points in records.—119. Jurisdiction of the subject.—120. Jurisdiction of the person.—121. Judgment, levy, sale, and deed.—122. Points to be noticed in records.

SECTION 117. In proceeding to the examination of titles founded on judicial proceedings, the prudence or timidity of the purchaser sometimes requires the searcher to examine, not only with reference to the safety of the title to be acquired, but also to the chances of his being involved in the subsequent litigation of the case under which the title has been made. Apprehensions of the result of future litigation are entirely groundless, for, both at common law and by statute, the reversal of a judgment does not divest the title of the purchaser at a sale made in pursuance of its authority, the purchaser not being a party to the suit,[1] or, in some states, the attorney of a party.[2] Where a search is made previous to the sale, with a view to bidding

[1] Goudy *v.* Hall, 36 Ill. 319 [R. S. Ohio, sec. 5409; Purd. Bright., pp. 484, 651, secs. 84 125; Rorer Jud. Sales, 2nd ed., secs. 576, 577; Comp. Laws Kans., sec. 3998. In Ohio, the purchaser, though a party, is protected. McBride *v.* Longworth, 14 O. St. 349].

[2] Bacon's Ab. Execution, Q.; Rearson *v.* Searcy, 2 Bibb, 202 [R. S. Ind., sec. 669].

at the sale, the closest attention to the regularity of the proceedings subsequent to the judgment may be necessary, to prevent the client bidding, and thereby incurring the risk of his purchase money lying idle in court while the regularity of the proceedings relating to the sale is contested, and receiving it back, without interest, at the end of the litigation. A very serious misapprehension of the true nature of a judicial sale is common among bidders. They imagine that a purchase "from the court" is attended with an implied expression of the opinion of the court upon the goodness of the title, and that they thereby get the title of the land itself, together with the highest possible assurance against any future claims upon it. The fact is, that a judicial sale is a sale of the interest of the defendant in the action, and nothing more.[1] No expression of the opinion of the court is involved in it, and no warranty of the title is given or implied.[2] The accepted bidder will, if the proceedings are regular, be required to pay the purchase money, whether he obtains a title or not. In Ohio, by statute, purchasers at judicial and tax

[1] O'Neal *v.* Wilson, 21 Alabama, 288; Starke *v.* Harrison, 5 Richardson, 7; Andrews *v.* Murphy, 12 Georgia, 431; Reed *v.* Kinnaman, 8 Iredell, 13; Vansyckle *v.* Richardson, 13 Illinois, 171; McLouth *v.* Rathbone, 19 Ohio, 21.

[2] Harth *v.* Gibbes, 3 Richardson, 316 [The Monte Allegro, 9 Wheat. 616; U. S. *v.* Duncan, 4 McLean, 607; Brackenridge *v.* Dawson, 7 Ind 383; King *v.* Gunnison, 4 Penn. St. 171; Jennings *v.* Jenkins, 9 Ala. 285].

sales acquire the interest of the plaintiff and of the state in the claim upon which the land is sold, and in case the title fails, have a lien on the land to that extent.[1] He who bids at a judicial sale of land "taken in execution *as* the property of" the defendant, without examination into the title of the defendant, soon parts with his money. If no worse mischief follows, he is pretty sure to find it incumbered by the claim of the wife to dower, which will give him the most lively interest in the good health and long life of the judgment debtor. An examination to satisfy the scrupulosity of a possible bidder, involves details too voluminous to be stated here. The points upon which the validity of the title depends will be considered in the next section.

SEC. 118. The mode of acquiring title to real property under judicial proceedings, is regulated by the law of the state wherein the lands lie, and the validity of the title depends upon the substantial conformity of the proceedings to that law.[2] To constitute that due course of law, without which the act of the court will not confer a title, it is essential that the court be one which has by law authority to entertain the suit with respect to that land;[3] to en-

[1] [R. S., sec. 5411.]

[2] Story's Confl. of Laws, sec. 550; Buell *v.* Cross, 4 Ohio, 330, note in Emerson's edition [Rorer Jud. Sales, 2nd ed., sec. 58].

[3] Ludlow *v.* Johnston, 3 Ohio, 552; Ludlow *v.* Wade, 5 Ohio, 494; Daniels *v.* Stevens, 19 Ohio, 222; Moore *v.* Robinson, 6 Ohio St. 302.

tertain it against the defendant as the owner thereof;[1] and that in the actual exercise of such authority, the land was taken, sold, and conveyed to the purchaser.[2] In other words, the court must have jurisdiction over the land and over the person of the assumed owner, and must have, in fact, proceeded to a judgment, levy, sale, and deed.[3] To require more would be to divest the judicial authorities of all title to respect, and require the purchaser to exercise that power of revision over the proceedings which belongs only to an appellate tribunal. To require less would be to divest the title without a completed judicial act. These essential points may be briefly explained.

SEC. 119. First, the court must be one which has by law authority to entertain the suit with respect to that land. This depends upon the law regulating the jurisdiction of the court, of which we can not now speak particularly. In general, courts of record, having a clerk and seal, are limited in the exercise of their jurisdiction, by the limits of the county or district within and for which they sit, and

[1] Pelton *v.* Platner, 13 Ohio, 209; Maxsom *v.* Sawyer, 12 Ohio, 195; Hodgson *v.* Bowerbank, 5 Cranch, 303 [Conference *v.* Price, 42 Ala. 49; Cooper *v.* Sunderland, 3 Ia. 114; Moore *v.* Neil, 39 Ill. 256; Torrance *v.* Torrance, 53 Penn. St. 505; Sheldon *v.* Newton, 3 Ohio St. 495; Gerrard *v.* Johnson, 12 Ind. 636].

[2] Adams *v.* Jeffries, 12 Ohio, 273; Allen *v.* Parrish, 3 Ohio, 187; Wheaton *v.* Sexton, 4 Wheaton, 503; 37 Penn. St. 307.

[3] Grignon *v.* Astor, 2 Howard U. S. 341; Boswell *v.* Otis, 9 Howard U. S. 346; Allen *v.* Parrish, 3 Ohio, 187.

can ordinarily entertain no jurisdiction of lands which lie beyond those limits. Suits, the direct and professed object of which is to obtain a sale of land under an existing charge, mortgage, or other lien, must, in such cases, be brought in the proper court in the county or district in which the lands are situated. The most numerous cases are, however, those which seek merely to fasten a personal liability upon the defendant by a judgment, irrespective of any particular property, to be followed by a writ of execution against any goods, chattels, or lands that he may possess. Jurisdiction in this latter case is ordinarily limited, not by the locality of the defendant's property, but by the ability of the officers of the court to serve process upon him within the territorial limits of the district or county; courts having, in general, jurisdiction over all persons actually served with process within those limits. The right to execute the judgment by executive process, is often much more extensive in point of territory than the power to adjudicate and render the judgment. Thus, though in Ohio the jurisdiction of the courts of common pleas, in respect to charges and liens on lands, and in respect to the ordinary service of a summons to commence an action, is limited to their respective counties, process in execution of the judgment establishing a liability against the person of the defendant, may issue from that court to every county in the state, and, under it, lands, in any county, may be sold.

SEC. 120. Second, the court must have authority

to entertain the suit against the defendant as the owner of the land. The usual requirement, with respect to obtaining jurisdiction over the person prescribed by the law regulating the proceedings of the court, is that the defendant must have due notice of the proceedings.[1] Universally, that is recognized as indispensable. But what is due notice is a question for the lawgivers. The means of giving notice which they prescribe must be pursued; and, if pursued, are equivalent to actual notice, though the defendant may never in fact hear of the proceedings.[2] It is not enough that the defendant is informed of the proceedings against him, as by the unauthorized service of a writ by an officer going beyond his territorial limits for that purpose;[3] he must have notice in the mode prescribed by law.[4] Nothing else is of any avail, unless he voluntarily appears in court and defends the action. The usual mode prescribed is by the service of a writ, issued under the seal of the court, and in the form, and served by the officer, and in

[1] Bradstreet *v.* Neptune Insurance Co., 3 Sumner, 600; Boswell *v.* Otis, 9 How. 346; Boswell *v.* Sharp, 15 Ohio, 447; Sawyer *v.* Maine Fire and Marine Insurance Co., 12 Mass. 291; Story on Confl. of Laws, secs. 549, 592; Sims *v.* Henderson, 11 Queen's Bench, 1014.

[2] Douglas *v.* Forrest, 4 Bingham, 686; Reynolds *v.* Fenton, 3 Common Bench, 187; Story on Confl. of Laws, sec. 584, et seq.

[3] Ewer *v.* Coffin, 1 Cushing, 23; Woodward *v.* Tremere, 6 Pickering, 354.

[4] Matter of Underwood, 3 Cowen, 59; Messinger *v.* Kinter, 4 Binney, 97.

the mode, directed by law. The searcher will necessarily be required to inform himself as to the requirements of the local law upon this subject. When the defendant has absconded or fraudulently conceals himself, process of attachment, by which his lands are seized by the officers of the court, is a commonly adopted mode of giving the defendant due notice. If the defendants are non-resident or unknown, and thus beyond the reach of process, the law ordinarily allows notice to be given by publication in the newspapers. These are the usual modes; but what requires particular attention is, that no mode is effectual in a particular case, unless it be the very mode appropriate by law to the circumstances. A publication, authorized in case of non-residents against a resident, however honestly and ignorantly done, would not confer jurisdiction over the resident; and so of other departures from the prescribed mode of giving notice. The purchaser must ascertain at his peril that the facts justified a resort to the mode adopted, and that the defendant was, as the expression is, legally brought into court; that is, that the means of giving notice, requisite in his particular case, have been resorted to. It is obvious, from what has been already stated, that the whole proceeding will be unavailing, if the persons made defendants are not the real owners of the land sought to be affected by the judgment or decree, and that the omission to make defendants those who have concurrent, paramount, or subsequent liens upon the

property, will leave all the rights of the omitted lien holders in full force against the land.

SEC. 121. Third, it is requisite that, in the actual exercise of the rightful authority of the court, the land be taken, sold, and conveyed to the purchaser.[1] Jurisdiction over the land, and over the person, is rightfully exercised when, on the requisite notice having been given to the defendants, a claim is made to the court by bill, petition, complaint, declaration, or by whatever means the practice of the court requires the plaintiff to make known his cause of action, in respect of the land, and against the defendants as the owners thereof, and the judgment is rendered thereon, authorizing a sale of the land; and the judgment is executed upon process of execution issued from the court, under the seal of the court, directing a sale, which is accordingly made; and, in case the law requires it, that the sale be approved by the court,[2] and a deed ordered to be made to the purchaser. The validity of the title involves the questions of the power of the court over this land, and this person as its owner, and the fact of the exercise of the power. Whether, the requisite notice having been given, the power

[1] Wheaton *v.* Sexton, 4 Wheaton, 503; Voorhees *v.* Bank of United States, 10 Peters, 449; 37 Penna. State, 307; Stall *v.* Macalester, 9 Ohio, 19; Brooks *v.* Rooney, 11 Georgia, 423; Draper *v.* Bryson, 17 Missouri, 71; Etheridge *v.* Edwards, 1 Swan's Tenn. R. 426; Carpenter *v.* Shaffner, 2 Carter's Indiana R. 465; Williamson *v.* Bedford, 10 Iredell, 198; Bybee *v.* Ashby, 2 Gilman, 151; Paine *v.* Mooreland, 15 Ohio, 436.

[2] Stall *v.* Macalester, 9 Ohio, 19.

was exercised well or ill, regularly or irregularly, may be of infinite moment to the defendants, but is no concern of the purchasers. A judgment, in a case where the jurisdiction existed, and was exercised, is title enough for him, though it should be impossible to sustain the judgment as a rightful decision, either in respect of the conformity of the procedure to the practice of the court, or as a just exposition of the rights of the parties upon the merits in the appellate tribunal.[1] Keeping in mind the radical distinction between the want of authority to divest the title, and irregularities in the mode of exercising that authority, we may proceed to consider, without again alluding to the difference between the points essential to be noticed, and those which the reasonable fears of the purchaser, or the clearness of the abstract may conveniently require, how a judicial record may best be abstracted.

SEC. 122. The points usually noticed in making an abstract of a judicial record, are: 1. The title and name of the court; as judgment of the Superior Court of Cincinnati, No. 24,447. 2. The names of all parties, plaintiff and defendant. 3. The summons or other notice, or publication by which the defendants are brought into court, the date, the seal of the court thereon, who are named therein as defendants, to what officer the writ is

[1] Reardon *v.* Searcy, 2 Bibb, 202; Terrill *v.* Auchauer, 14 Ohio St. 80; Cochran *v.* Loring, 17 Ohio, 409.

directed, and his return thereon, showing who were served, when served, and how served. Where the defendants are very numerous, as often happens in cases of creditors' bills, or other complicated proceedings in equity, it may be advisable to state the names of the defendants in columns, and mark the number of them, for the convenience of checking them off, one by one, as the facts of their being included in the writ, and the return, and their answering, successively appear. If new parties are added in the progress of the suit, their names should also appear in this part of the abstract, as well as in their natural chronological order in the history of the case. As the rights of all persons who are parties to the judgment or decree will be bound thereby, and as no other person's rights will be bound, it is a saving of labor, and tends to greater certainty, to have them all stated plainly at the outset. Where the defendants have been brought into court by publication, or by the attachment of their effects, or other substituted modes of service, the peril of the mode adopted not being by law appropriate to the circumstances, requires the most careful scrutiny into all the steps of the proceeding, which should be fully stated in the abstract. 4. The nature of the claim made; abstracting for that purpose the material parts of the bill, petition, etc., so as to show that the subject of the action is within the jurisdiction of the court, both in respect to the locality of the land, and the nature or objects of the suit. 5. Whether the defendants answered or suffered a default; and if any

answered the date, and a brief statement of the nature of the answer, so as to show that the defendant submitted himself to the jurisdiction of the court, by pleading to the merits of the action. A non-resident defendant who employs counsel to contest the jurisdiction of the court that has seized his effects by attachment, does not submit himself to its jurisdiction. 6. If any of the defendants are minors, lunatics, or other persons deemed incompetent to defend themselves, the appointment of a a guardian for suit for them, the acceptance of the appointment, and their answers being filed, must be noted. No judgment or decree can be taken against such persons by default. The case must be proved against them. The answer of the guardian for suit, being always a mere formal submission of the rights of the ward to the court, need not be stated in the abstract in detail. If a married woman is a party, her husband must be a party with her, unless they are contending with each other, in which case she must appear by "her next friend." A minor plaintiff appears in the same manner. 7. The judgment, the date of it, the term of the court, the page of the record in which it is entered, with a statement of the material parts of it, showing authority to sell lands, if it be for a sale of lands, or the amount, and the day from which interest is to be computed, if it is against the person only of the defendant; and, if the final record is made up, the volume and page of that record. It will be observed that no notice is here taken of any pleadings, motions, or other proceedings subsequent

to the answer or plea of the defendant, and before judgment. This omission is intentional. For the reasons already stated in section 120, such proceedings are irrelevant to the question of the title, and to insert them tends to distract the attention of counsel from the points that are material. 8. Whether any notice of appeal, or bill of exceptions, or other proceedings which may stay the execution of the judgment, or carry the cause to an appellate court, appears of record; and, if it does, the nature of it, the date of the motion, and the name of the party moving. As already stated, this is not essential to the title as a matter of law; but it may affect the salableness of the land, as a matter of fact, in the view of purchasers, in consequence of that distrust which all men naturally feel about dealing with property over which there is a judicial contest. 9. The writ of execution, or order of sale, to carry the judgment into effect; its date, the seal of the court thereon, to what officer issued, the command of the writ directing the sale of the particular lands; or, if an execution on a personal judgment, the nature of the execution; as, a *levari facias*. 10. The return made by the officer upon the writ. If the writ were an order out of chancery, it will simply show a compliance with the order, such as advertising the lands for sale, the appraisement of the lands, the sale, the date of the sale, the name of the purchaser, the price paid, and the date of the return. But, if it be a writ of execution at law, it must show a levy on lands, as a foundation for all sub-

sequent proceedings. A sale, without any levy, on an execution at law, is invalid. Neither an omission to appraise the lands, where appraisement is directed by law, nor a mistake as to the time or mode of advertising the lands, will affect the title of the purchaser.[1] The question is not whether the proceedings are regular; but whether this writ, or this order of sale, authorized the officer to sell these lands. If it does, the purchaser may assume that the officer knew his duty as to the mode of sale, and did it. 11. Where the law requires the sale to be reported to the court, and confirmed by it, the order of confirmation is essential to the completion of the sale, and the title will not be valid without it. The confirmation of the sale, the date of it, the name of the purchaser as therein stated, and the order to deliver to him the deed, must, therefore, be stated in the abstract. 12. If the cause was removed into an appellate court, by appeal or by writ of error, the proceedings thereupon are to be abstracted in a similar manner, so as definitely to inform the purchaser of the exact extent to which the judgment was affirmed or modified in the appellate tribunal, and what order was therein made with respect to the execution of the judgment, either by process issuing out of that court, or by remanding the cause to the inferior court to be carried into execution there. 13. The person perusing an abstract having a right to test the accuracy of every statement con-

[1] Allen *v.* Parrish, 3 Ohio, 188; Stall *v.* Macalester, 9 Ohio, 19.

tained in it, the searcher should be careful to give him every possible means of information, by stating the dates of every transaction, the number of the writs, if they are numbered, the term, volume, and page of the records, and especially to point out any departure from the practice of the court in any proceeding. It is, for example, assumed that the process is issued from the proper court, signed by the proper officer, is in the usual form, etc.; and, if the facts are otherwise, they must be stated.

CHAPTER VIII.

OF SEARCHING FOR WILLS AND ABSTRACTING THEM.

123. General principles.—124. Points to be noticed.—125. Alabama.—126. Colorado.—127. Georgia.—128. Illinois.—129. Indiana.—130. Iowa.—131. Kansas.—132. Kentucky.—133. Michigan.—134. Minnesota.—135. Nebraska.—136. New York.—137. Ohio.—138. Pennsylvania.—139. Tennessee.—140. Wisconsin.

SECTION 123. That a paper professing to be a man's last will is in fact so, can be determined only by a judicial sentence establishing it as such. In the United States, this power is usually vested in probate courts, or courts exercising like jurisdiction, whose determinations in establishing or rejecting a will are final and conclusive on all courts, except where the statute allows an appeal, and in proceedings upon that appeal.[1] The validity of the will is determined, so far as it relates to land, by its conformity to the law of the state wherein the lands lie, and not by the law of the testator's domicil, nor by the law of the place of the original probate.[2] It

[1] 1 Greenleaf Ev., sec. 528; 2 Greenleaf Ev., sec. 672; Inhabitants of Dublin *v.* Chadbourne, 16 Mass. 433; Tompkins. *v.* Tompkins, 1 Story, 552; Bailey *v.* Bailey, 8 Ohio, 239; Poplin *v.* Hawke, 8 New Hamp. 124.

[2] Wills *v.* Cowper, 2 Ohio, 124; Holmes *v.* Remsen, 20 Johnson, 229; Story Confl. of Laws, sec. 474.

is, therefore, proposed to consider separately the laws of the several states respecting the formal execution and proof of wills. But the points which arise on all wills, which are established as wills, may be first stated.

SEC. 124. The abstract should state the name of the testator, the date of the will, the date of the probate, the court in which probate was had, and the page and volume of the record. If the time for contesting the probate has gone by, the searcher may assume that the testator was legally competent to make the will, and that it was duly executed; but if the heirs at law are minors, or married women, or non-resident, or otherwise within the saving of the statute of limitations, the abstract should proceed to state all the facts which show a compliance with the statutes of wills, such as the signing, the attestation of the witnesses, and the like. The formal proofs having been stated. An abstract of the contents of the will, so far as it affects the land in question, should follow. In wills drawn by unprofessional persons, this is sometimes so difficult to do as to make it desirable to state all the relevant clauses verbatim. External inquiry is sometimes necessary to learn whether the will is liable to be frustrated, in whole or in part, in consequence of provisions made for the widow, who declines to accept them, or in consequence of the limitations imposed by the statutes of descent and distribution on the power of the husband to dispose of his whole estate, or in consequence of the birth of a posthu-

mous child, or the return of a child supposed to be dead, or in consequence of the will creating a case of election in the devisee, and the like. The questions which arise upon the true construction of the will are too numerous to be considered, and reference must be had to Jarman on Wills, and other approved works upon the subject. The cases wherein the testator charges a legacy on lands,[1] or creates trusts which require the purchaser of lands to see to the proper application of the purchase money,[2] or attempts to create an estate tail, or a perpetuity beyond the limits allowed by law, will require special attention. Powers given by the testator to his executors to sell lands are generally regulated by statutes.[3] Except in the case of perpetuities, estates tail and the like, there is no control over the intention of the testator by the rules of law. The attention of the courts, therefore, in construing wills, is almost exclusively directed to ascertaining the intention of the testator, which is deduced, as in the case of deeds, from what is found in the instrument.[4] The formal evidence of the

[1] Decker *v.* Decker, 3 Ohio, 166; Coonrod *v.* Coonrod, 6 Ohio, 114; Nelson *v.* Nelson, 19 Ohio, 282; Swift *v.* Nash, 2 Keen, 20; Graves *v.* Graves, 8 Simons, 43; Cross *v.* Kennington, 9 Beavan, 150.

[2] Sec. 57.

[3] Donley *v.* Shields, 14 Ohio, 359; 3 Redfield on Wills, 3rd ed., p. 136.

[4] Collins *v.* Hope, 20 Ohio, 500; Painter *v.* Painter, 18 Ohio, 265; Hiscocks *v.* Hiscocks, 5 Meeson & Welsby, 363; 1 Greenleaf on Ev., sec. 289.

authenticity of a will being, as will be seen presently, almost the same in the seven states named in this chapter, and the rules of the common law for the interpretation of wills being common to all the states, the searcher's scrutiny will, in all the states, be mainly directed to ascertaining the meaning of the instrument.

[SEC. 125. In Alabama, wills must be in writing, signed by the testator, or some person in his presence and by his direction, and attested by at least two witnesses, who must subscribe their names thereto in the presence of the testator.

If competent when they attest a will, the subsequent incompetency of witnesses does not invalidate it.[1] Every person of the age of twenty-one of sound mind may devise by his last will.

Married women may dispose of their separate estates by will.[2]

A devise passes after acquired property, unless otherwise expressed.[3] Where a will is made disposing of the whole of the property of the testator, who marries and has issue, and the wife or issue is living at the time of his death, the will is revoked, unless a provision is made for the issue by some settlement, or unless the issue is provided for in the

[1] [Ala. Code, 1876, secs. 2294, 2295.]

[2] [Id., secs. 2274, 2713. A convict sentenced to imprisonment for life, may make a will within six months after his sentence. Id., sec. 4512.]

[3] [Id., sec. 2289.]

will, or mentioned in such a way as to show an intention not to make such provision.[1]

Marriage of an unmarried woman operates as a revocation of her will previously made.[2]

Wills are proved in the probate courts, 1. When the testator, at the time of his death, was an inhabitant of the county, in the probate court of such county. 2. When the testator, not being an inhabitant of the state, dies in the county, leaving assets there, in the probate court of such county. 3. When the testator, not being an inhabitant of the state, dies out of the county, leaving assets there, in the probate court of the county in which such assets or any of them are. 4. When the testator, not being an inhabitant of the state, dies, leaving no assets therein, but assets thereafter come into any county, in the probate court of that county.[3]

A will proved in another county may be admitted to probate in the state, when the testator was not, at the time of his death, an inhabitant of the state, and his will has been duly proved in any other state: 1. If the will has been admitted to probate out of the state but within the United States, such will, or a copy of the same, and the probate thereof, must be certified by the clerk of the court in which the same is proved, with a certificate of the judge of the court that the attestation is genuine and by the proper officer; and, if the will is proved before

[1] [Ala. Code, 1876, sec. 2282.]
[2] [Id., sec. 2283.]
[3] [Id., sec. 2304.]

a court not having a clerk, or before an officer who is his own clerk, the certificate of the judge of such court or officer stating such fact is sufficient. 2. If the will has been admitted to probate out of the United States, the will, or a copy of it, with the probate, must be certified by the clerk or other officer of the court in which the will was proved, and a certificate of the judge of the court that the attestation is genuine. Where the will is proved before a court having no clerk, or an officer who is his own clerk, the certificate must so certify, and in that case the attestation must be certified to be genuine by the judge of any court of record, or the mayor or chief magistrate of any town, city, county, or borough, or by any diplomatic, consular, or commercial agent of the United States.[1]

Persons interested in a will, may contest its validity within five years after the admission of such will to probate in the state by a bill in chancery in the district in which the will was probated, or in the district in which a material defendant resides. The issue may be tried by a jury or by the chancellor. Infants and lunatics may contest the validity of a will within five years after their disabilities are removed, but in no case after twenty years from probate.[2]]

[Sec. 126. In Colorado, wills must be reduced to writing and signed by the testator, or some one in his presence and by his direction, and attested

[1] [Ala. Code, sec. 2313.]

[2] [Id., secs. 2336, 2337, 2338.]

in the presence of the testator by two or more creditable witnesses.

Every person of the age of twenty-one if a male, or eighteen if a female unmarried, of sound mind and memory, may dispose of their realty by will. A married woman may make a will, but can not devise away from her husband more than one-half of her property, real and personal, without his consent in writing.[1]

A will is not revoked because a posthumous child is not provided for. But, unless it appears to have been the intention of the testator to disinherit such child, the legacies shall be abated in equal proportions, to raise a portion for such child, which must be the same as if the testator died intestate.[2]

Wills are proved in the county court of the county where the mansion-house or known place of residence of the testator is. If he has no place of residence, and lands are devised in the will, in the court of the county where the lands lie, or in one of them, where there are lands in several different counties. If the testator has no known place of residence, and there are no lands devised in the will, it may be proved in the county where the testator died, or where his estate, or the greater part of it, lies.[3]

Wills proved and recorded in other states or territories of the United States, beyond the limits of

[1] [Gen. Laws, 1877, secs. 1750, 2788, 2789.]
[2] [Id., sec. 2795.]
[3] [Id., sec. 2800.]

the state, and authorized by the laws of such states or territories to be probated, may be admitted to probate, when certified in the manner required by the Act of Congress, without further proof of the execution of the same, and without notice to the heirs, widow, or husband, and letters testamentary may be issued thereon.[1]

Heirs at law or persons interested may contest a will, who were not summoned by actual service or process, and who did not appear at the probate, at any time within two years after its admission to probate, by a bill in equity in the district court of the county where the will is probated, or of the county to which such county is attached for judicial purposes. Persons under disability have a like period after their disability is removed to contest the will.[2]]

[SEC. 127. In Georgia, wills must be in writing, signed by the testator, or by some other person in his presence and by his express direction, and attested and subscribed in the presence of the testator by three or more competent witnesses.

Subsequent incompetency of a witness will not defeat a will if he is competent at the time of attesting the same.[3] Every person is entitled to make a will, unless laboring under some disability of the law. This disability arises either from want

[1] [Gen. Laws, 1877, sec. 2814.]
[2] [Id., sec. 2815.]
[3] [Code, 1873, secs. 2414, 2416.]

of capacity or want of perfect liberty. Infants under fourteen years of age are considered wanting in capacity to make a will.

An insane person can not generally make a will. A lunatic may, during a lucid interval. A monomaniac may make a will, if the will is in no way the result of or connected with the monomania.[1]

Married women are generally incapable of making wills, for want of perfect liberty of action. But a married woman may make a will: 1. Where express power to will her separate estate is reserved or granted to her in the instrument creating the same, or by marriage contract. 2. When, having a separate estate absolutely, or an estate in expectancy, her husband consents to her disposing of it by will. 3. Where her will is in execution of a power vested in her. 4. Whenever, by reason of the abandonment of her husband, or a divorce from bed and board, or other cause, the law declares her to have the right of a *feme sole* as to her own earnings. Conviction of a crime and imprisonment does not deprive a person of the power to make a will, nor does any imprisonment, unless it is used as duress to compel its execution.[2]

Wills are proved by the courts of ordinary, which have exclusive jurisdiction thereof. The residence

[1] [Code, secs. 2405, 2406, 2407.]

[2] [Id., secs. 2410, 2411. Marriage of testator, or birth of a child subsequent to making a will for whom no provision is made, operates as a revocation of the will. Id., sec. 2477.]

of a testator at his death gives jurisdiction to the ordinary of that county.[1]

The probate of a will may be either in common form or solemn form. In the former, a will is proved and admitted to record upon the testimony of a single subscribing witness, and without notice to any one. But such probate and record is not conclusive upon any one interested in the estate adversely to the will, and if it is afterward set aside, it does not protect the executor in any of his acts, further than the payment of the debts of the estate. Purchasers under sales from him legally made will be protected, if *bona fide* and without notice.[2]

The probate in solemn form is where, after due notice to all the heirs, the will is proved by all the witnesses in existence and within the jurisdiction of the court, or by proof of their signatures and that of the testator, where the witnesses are dead. Such probate is conclusive upon all the parties notified.[3]

Foreign wills may be admitted to probate in the state by the court of ordinary of the county where the testator was domiciled at the time of his death, or of any county of the state in which any of the property is situated, if he is a foreigner, when a copy of the will and of the probate, authenticated by the seal of the court where the same is made, is received.[4]

[1] [Code, secs. 331, 2421.]
[2] [Id., sec. 2423.]
[3] [Id., sec. 2424.]
[4] [Sup. to Code, 1878, sec. 381; L., 1878–9, p. 146.]

The probate of a will in common form becomes conclusive upon the parties in interest after the expiration of seven years from the time of probate, except minor heirs at law, who require proof in solemn form, and interpose a caveat at any time within four years after arriving at age. If the will in such a case is refused probate and record in solemn form, an intestacy is declared only as to such minor, and not as to others whose right to a caveat is barred by lapse of time.[1]

Notice of a motion for probate in solemn form must be personal, if the party resides in the state, at least ten days before the term of court when the probate is made. If the party resides without the state, an order of publication must be made.[2]]

SEC. 128. In Illinois, wills are proved before the county court of the county wherein the mansion house or place of residence of the testator was; or, if he had no place of residence, in the county wherein the land devised lies, or in one of the counties where there is land in several different counties [or, if he have no such place of residence, and there be no lands devised in such will, it may be probated either in the county where the testator died, or wherein his estate, or the greater part of it, lies], and are recorded in the court of probate.[3] Any person interested may, within three years after the probate of the will, contest the will

[1] [Code, 1873, sec. 2425.]

[2] [Id., sec. 2427.]

[3] [R. S. Ills. 1880, p. 1538, sec. 11.]

in the county court of the county wherein the will was proved, by bill in chancery. [An issue at law is made up, which is tried in the circuit court of the county wherein the will is probated, before a jury.] Infants, married women, persons absent from the state, and persons of unsound mind, are allowed a like period after the removal of their respective disabilities, to contest the will. If not contested within the time allowed, the probate is conclusive on all parties concerned.[1] Men, twenty-one years of age, and unmarried women, of eighteen years of age, may make wills, which must be in writing, signed by the testator, or by some person in his presence, and by his direction, and attested in the presence of the testator by two or more credible witnesses, two of whom declaring on oath or affirmation that they were present and saw the testator sign the will in their presence, or acknowledge the same to be his act, and that they believe the testator was of sound mind and memory at the time of acknowledging the same.[2] Married women may dispose of their separate estates by will. The birth of a child subsequent to the date of a will, is not a revocation, but, unless it appears by the will that the testator intended to disinherit such child, he will be entitled to receive such portion of the father's estate as he would have had in case the testator had died

[1] [R. S. Ills. 1880, p. 1536, sec. 7.]
[2] [Id., p. 1534, secs. 1, 2.]

intestate.[1] Powers given by executors by will to sell lands, may be executed by the survivor.[2] The lands of decedent are liable for the debts of his estate, but, if aliened by the heir to a *bona fide* purchaser before an action is brought by the creditor, the heir or devisee, and not the purchaser, is liable to the creditor for such debts to the value of the land.[3] Wills proved according to the laws of any of the United States, or the territories thereof, or of any country out of the United States, accompanied with a certificate of the proper officer that the will was duly executed and proved agreeably to the laws and usages of that state or country in which the will was executed, are good in like manner as wills made and executed in the state.[4] Such wills may be recorded in the same office where deeds or other instruments concerning real estate may be required to be recorded.[5] Powers given to executors to sell lands in such wills, may, upon the recording of the will, with due proof of its probate abroad, in the probate or county court of the county in which the land lies, be executed in the same manner as though the executor had qualified in the state.[6] Deeds made in pursuance of powers vested by wills executed out of the state, are valid, though the will was never proved in the state.[7]

[1] [R. S., p. 543, sec. 10.]
[2] [Id., p. 73, sec. 96.]
[3] [Id., p. 743, sec. 12.]
[4] [Id., p. 1537, sec. 9.]
[5] [Id , p. 317, sec. 33.]
[6] [Id , p. 59, sec. 42. The executor or administrator must give a bond for costs.]
[7] [Id., p. 317, sec. 34.]

SEC. 129. In Indiana, wills are proved in the circuit court, when in session, or before the clerk thereof in vacation, in the county wherein the testator resided at the time of his death, or, if not an inhabitant of the state, in the county where he died, leaving assets therein; or, if not an inhabitant of the state, and he died out of the state, in the county wherein he left assets, or where the testator, not being an inhabitant of the state, died out of the state, leaving no assets in the county, but assets come into the county afterward.[1] Any person may contest the validity of the will, at any time within three years from the time it has been offered for probate, by a proceeding in the circuit court of the county where the testator died, or where any part of his estate is;[2] and the case may be carried by appeal, or writ of error, to the supreme court.[3] Infants, and persons absent from the state, or of unsound mind, are allowed two years after their disabilities are removed to contest the will.[4] A will must be in writing, signed by the testator, or by some one in his presence, with his consent, and attested and subscribed in his presence by two or more competent witnesses.[5] Since May 31st, 1852, married women may make wills.[6] Every devise in terms denoting the testator's intention to devise

[1] [R. S. Ind. 1881, secs. 2579, 2580.]
[2] [Id., sec. 2596.]
[3] [Id., sec. 2605.]
[4] [Id., sec. 2601.]
[5] [Id., sec. 2576.]
[6] [Id., sec. 2557.]

his entire interest in all his real or personal property, will pass all the estate in such property, which he was entitled to devise at his death.[1] Conditions in wills, restraining a wife from marrying again, are void.[2] The birth of legitimate issue subsequent to the date of the will, though posthumous, will, if the issue survive the testator, operate as a revocation of the will, unless provision is made therein for such issue.[3] The title of the purchaser of land, in good faith, and for valuable consideration, from the heir of any person who died seized of the land, can not be impaired by virtue of any devise, unless the will is proved and recorded in the office of the clerk of the court having jurisdiction, within three years after the death of the testator, except in cases where the devisee was a minor, or of unsound mind, or imprisoned, or out of the state, at the time of the testator's death, or the existence of the will was concealed from or was unknown to him, in which cases the limitation shall not commence until after the expiration of one year from the time the disability is removed, or said will has come into the control of the devisee or his representative, or has been deposited in the clerk's office of the circuit court.[4] Written wills proved or allowed in any other of the United States, or in any foreign country, according to the laws of such state or coun-

[1] [R. S. Ind. 1881, sec. 2567.]
[2] [Id.]
[3] [Id., sec. 2560.]
[4] [Id., sec. 2575.]

try, may, on proper proof of the probate abroad, be received and recorded in the circuit court of the county in which there is any estate on which the will may operate; and, when so recorded, have the same effect as if they had been originally admitted to probate, and recorded in this state.[1] No will executed in the state can be admitted to record unless executed according to the laws of the state.[2]

SEC. 130. In Iowa, the circuit court has power to take probate of wills of persons who, at the time of their death, were residents of the county, or who died non-residents, but having property to be administered upon within the county. The probate is conclusive, unless set aside by an original or appellate proceeding in the district court.[3] Any person of full age and sound mind may dispose of property by will, in writing, witnessed by two competent witnesses, and signed by the testator, or by some person in his presence and by his express direction.[4] Posthumous children, unprovided for by the father's will, inherit the same interest as though no will had been made.[5] After acquired property passes by the will. Wills proved and allowed in

[1] [R. S. Ind., secs. 2591–2593.]

[2] [Id., sec. 2954.]

[3] [Stat. Ia. 1880, sec. 2353.]

[4] [Id., secs. 2322, 2326. A married woman may devise property, real and personal, which she owns in her own right, acquired by descent, gift, or purchase. Id., sec. 2202.]

[5] [Id., sec. 2334.]

any other state or country are allowed and recorded in any county in which it may be desired to use them, upon the production of a copy thereof to the proper county court, and of the original record of probate, duly authenticated by the attestation of the clerk of the court in which the will was proved. If there be no clerk, such attestation may be made by the judge or presiding officer, and in all cases, if the clerk or officer making such attestation have a seal of office, such seal shall be annexed to the attestation.[1]

SEC. 131. In Kansas, wills are proved and recorded in the probate court of the county in which the mansion-house or place of abode of the deceased is situated; if he had no place of abode, then in the county in which the land, or a part of it, lies. The probate is conclusive, unless set aside by an original or appellate proceedjng in the district court. Any person of sound mind and full age, including married women, may make a will, which must be in writing, signed at the end by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses, who saw the testator subscribe or heard him acknowledge the same.[2] After acquired property passes by the will.[3] Posthumous children, unprovided for by the father's will, inherit the same

[1] [Stat. Ia., 1880, sec. 2351.]
[2] [Comp. Laws, 1881, sec. 6114.]
[3] [Id., p. 1007, sec. 53.]

as though no such will had been made.[1] Persons interested in, may contest the validity of a will within two years after probate. Persons under legal disabilities have a like period in which to contest a will after their disabilities are removed. The mode of contesting is by a civil action in the district court of the county in which the will is probated, which may be brought at any time within two years after the probate of a will.[2] The rule in Shelly's case as to wills is abolished.[3]

Authenticated copies of wills executed in other states or countries, in conformity with the laws of such states or countries, may be admitted to record in this state where any part of the property may be situated. When so admitted, a copy of such recorded will, with a copy of the order of record, certified by the probate judge under the seal of the court, may be filed and recorded in the office of the probate court of any other county in the state where any of the property is situated.[4]

SEC. 132. In Kentucky, the probate of a will is confined to the county court of the county of the testator's residence; or, if he had no residence in the state, and the will devises land, then to the county where the land, or a part of it, lies, or if no land is devised, then to the county where he died, or where there may be any debt or demand owing him.[5]

[1] [Comp. Laws, 1881, sec. 6148.]
[2] [Id., secs. 6131, 6132.]
[3] [Id., sec. 6164.]
[4] [Id., sec. 6136.]
[5] [Gen. Stat. Ky., 1881, pp. 837, 838, secs. 26, 28.]

As in other states, no will can be received in evidence until it has been allowed and admitted to record by the county court. The probate is conclusive until reversed.[1]

An appeal lies from the county court to the circuit court of the same county, and thence to the court of appeals, upon every order admitting a will to record or rejecting it, within five years after rendering the order of probate or rejection in the county court, and to the court of appeals within one year after the final decision in the circuit court.[2]

Non-residents not personally served with process on the probate of a will, or any other person interested who is not a party by actual appearance or being personally served, may, within three years after a final decision admitting or rejecting a will, impeach the decree; and infants not parties to the original contest are not barred until twelve months after attaining full age.[3]

A married woman can not make a will, except to dispose of an estate secured to her separate use, or to exercise a special power to that effect.[4]

Since 1797, no will is valid unless it is in writing, with the name of the testator subscribed thereto, by himself or by some other person in his presence and by his direction. If not wholly written by the testator, the subscription must be made, or the will

[1] [Id.]
[2] [Id., sec. 27.]
[3] [Id., p. 840, sec. 37.]
[4] [Id., pp. 831, 832, secs. 2, 4.]

acknowledged, by him in the presence of at least two credible witnesses, who must subscribe the will with their names in the presence of the testator.[1]

No person under twenty-one can make a will, except in pursuance of a power specially given, and except that a father, though under twenty-one years of age, may appoint by will a guardian to his child.[2]

To pass lands, the wills of non-residents must be executed conformably to the law of Kentucky.[3] Powers of appointment are regulated by the statute. Devisees take subject to the testator's debts; but lands aliened by the heir or devisee before suit brought by the creditor, are not liable to the claims of creditors in the hands of *bona fide* purchasers for a valuable consideration.[4] The rule in Shelly's case is abolished as to deeds and wills.[5]

[SEC. 133. In Michigan, wills must be in writing, signed by the testator or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses.[6]

A married woman can make a will without obtaining the consent of her husband.[7]

[1] [Gen. Stat. Ky., sec. 3, 1881, pp. 831, 832, sec. 5.]
[2] [Id., p. 832, sec. 3.]
[3] [Id., p. 839, sec. 30.]
[4] [Id., p. 489, secs. 5, 8.]
[5] [Id., p. 586, sec. 10.]
[6] [Comp. Laws. 1871, sec. 4326.]
[7] [Laws, 1873, p. 13.]

A devise of land conveys all the estate of the devisee, unless the contrary is expressed.[1]

After acquired property passes by a devise, if it manifestly appears to have been the intention of the testator.[2] Children born after the making of a will, or omitted by mistake in the will, have the same proportion of the estate as in case of intestacy.[3]

Wills are proved in the probate court, or on appeal in the circuit or supreme court, and the probate is conclusive as to their due execution.[4]

Wills of land situated in this state, executed according to the laws of any other state or country, may be admitted to probate in this state, on the production of a certified copy.[5]]

[SEC. 134. In Minnesota, wills must be proved and allowed in the probate court, or on appeal in the district court, and the probate is conclusive as to their execution.

Wills duly proved in any of the United States, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed, and recorded in the probate court of any county in which the testator has real or personal estate.[6]

Wills must be in writing, signed at the end by

[1] [Comp. Laws 1871, sec. 4323.]

[2] [Id., sec. 4324.]

[3] [Id , secs. 4346, 4347.]

[4] [Id., sec. 4341. A recent act of the legislature of this state enables a person to establish his will in his life-time, and prevent any contest over it after his death. Public Acts, 1883.]

[5] [Id., sec. 4342; Public Acts 1881, p. 85.]

[6] [Stat. 1878, p. 569, secs. 17, 18.]

the testator or by some person in his presence, and by his express direction, and attested and subscribed in his presence by two or more subscribing witnesses. If witnesses are competent at the time of the attestation of a will, their subsequent incompetency will not prevent its probate.[1]

Married women may dispose of real or personal property by will held by them in their own right.[2]

Children born after making a will, or omitted by mistake in the will, have the same share of the estate of the testator as though he died intestate.[3]

An appeal lies from the probate to the district court. Upon the filing of the return of the probate court in the office of the clerk of the district court, such appeal is presumed to have been duly proved.[4]

The rule in Shelly's case is abolished in this state.[5]

The provisions for contesting wills are the same as in Wisconsin.[6]]

[Sec. 135. In Nebraska, every person of full age and sound mind, including married women, having property in their own right, may make a will.[7]

[1] [Stat. 1878, p. 568, sec. 5.]
[2] [Id., p. 567, sec. I.]
[3] [Id., p. 570, secs. 22, 23.]
[4] [Id., pp. 575, 576, secs. 13, 18.]
[5] [Id., p. 562, sec. 28.]
[6] [Id., p. 569, sec. 14.]
[7] [Comp. Stat. 1881, p. 226.]

Wills must be in writing, signed by the testator or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses. If the witnesses are competent at the time of attesting the execution, their subsequent incompetency will not prevent the probate of the will.[1]

Wills duly proved and allowed in any of the United States, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed, and recorded in the probate court of any county in which the testator may have real and personal estate on which such will may operate.[2]

After acquired estate passes by a will, if it shall manifestly appear by the will to have been the intention of the testator.[3]

Posthumous children have the same share of the testator's estate, when unprovided for, as in case of intestacy.[4]]

[Sec. 136. In New York, the surrogate's court of each county has jurisdiction, exclusively, of every other surrogate's court to take the proof of a will, in the following cases: 1. Where the deceased was at the time of his death a resident of that county, whether his death happened there or else-

[1] [Comp. Stat. 1881, p. 227.]
[2] [Id., Ch. 23, sec. 144.]
[3] [Id., sec. 125.]
[4] [Id., sec. 148.]

where. 2. Where the decedent, not being a resident of the state, died within that county, leaving personal property within the state, or which has since his death come into the state and remains unadministered. 3. Where the decedent, not being a resident of the state, died without the state, leaving personal property within that county, and no other, or which since his death has come into that county, and no other, and remains unadministered. 4. Where the decedent was not at the time of his death a resident of the state, and the petition for probate of his will has not been filed in any surrogate's court; but real estate of the decedent to which the will relates, or which is subject to disposition, is situated within that county, and no other.[1]

All persons, except idiots, persons of unsound mind, and infants, may devise their real estate by will.[2]

Wills must be in writing, subscribed by the testator at the end thereof, in the presence of each of the attesting witnesses, or acknowledged by him to have been so made to each of the attesting witnesses. The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed to be his last will and testament. There must be at least two attesting witnesses, each of whom must sign his name as a witness at the end of the will,

[1] [Code Civil Procedure, sec. 2476.]

[2] [R. S., vol. 3, p. 2283.]

at the request of the testator. The witnesses must write opposite their names their places of residence.[1]

Posthumous children, unprovided for, have the same proportion of the estate of testator as though he had died intestate.[2]

A will executed by an unmarried woman is deemed revoked by her subsequent marriage, as is also that of a man who marries and has issue by such marriage.[3]

Every will made by a testator in express terms of all his real estate, or in any other terms denoting his intent to devise all his real estate, shall be construed to pass all the real estate which he acquires and devises at the time of his death.[4]

A devise to a person who at the time of the death of the testator is an alien, unauthorized by statute to hold real estate, is void, and the interest so devised descends to the heirs at law.[5]

Wills of real property situated in this state, and executed according to the laws of another state, and duly admitted to probate there, may be admitted to probate in this state, on the production of an exemplified copy.[6]

The validity of wills may be determined by the supreme court in a proper action for that purpose,

[1] [R. S., vol. 3. pp. 2285, 2286, secs. 40, 41.]
[2] [Id., p. 2287, sec. 49.]
[3] [Id., p. 2286, secs. 43, 44.]
[4] [Id., p. 2284, sec. 5.]
[5] [Id., p. 2284, sec. 4.]
[6] [Code, sec. 2703.]

in which all persons interested may be made parties. After final judgment in any such action, any party may be enjoined from setting up or impeaching the will.[1]

The limitation of an action to establish a will is six years.[2] But where a will has been lost, concealed, or destroyed, the cause of action is not deemed to have accrued until the discovery by the plaintiff or person under whom he claims of the facts on which its validity depends.]

Sec. 137. In Ohio, wills are proved before the probate court of the county where any real or personal estate devised by the will may be situated, and are, together with the evidence of the probate, filed and recorded there. Wills proved prior to July, 1853, were proved in the court of common pleas of the county. On the transfer of jurisdiction of probate matters from that court to the probate court, in July, 1853, the records of wills previously made in the common pleas were transferred to the probate court, and all searches for wills will, therefore, now be made in the latter court. Wills made since 1831, in another state or nation, executed and proved according to the law of the place where made, were admitted to probate in Ohio, but did not affect property there, unless made in conformity to the law of Ohio;[3] but wills made since October 1st, 1840, in another state or nation, exe-

[1] [R. S., vol. 3, p. 2284.]

[2] [Code Civil Procedure, sec. 382.]

[3] Curwen, 1905.

cuted and proved according to the law of the place where made, may be admitted to record in Ohio, and when so recorded in the counties where the lands lie, have the same effect as if originally made in Ohio, in conformity to the laws of Ohio.[1] Wills devising real estate, wherever made, are, either by original probate or by copies of records, admitted to record in every county in which such real estate may be situated. Every will must be in writing, and signed at the end thereof by the party making it, or by some other person in his presence and by his express direction, and must be attested and subscribed in the presence of the testator by two or more competent witnesses, who saw him subscribe or heard him acknowledge it.[2] Men aged twenty-one, and women aged eighteen years, married or unmarried, have, since 1805, been competent in Ohio to make wills.[3] Probate of the will is conclusive, unless contested by petition in the court of common pleas of the county within two years after probate had, saving the rights of infants, married women, and persons absent from the state, or of insane mind, or in captivity, for a like period after their respective disabilities are removed.[4] The rights of *bona fide* purchasers, without knowledge of a will, to any lands in the state derived from the heir of any person not a resident of the state at the time of his death, can not be defeated

[1] Curwen, 688, 1005.
[2] [R. S. Ohio, sec. 5916.]
[3] [Id., sec. 5914.]
[4] [Id., sec. 5933.]

by the production of a will of the ancestor, unless the will is offered for record in this state within four years from the final probate of the will abroad.[1] A devise passes the whole estate without words of perpetuity, and also after acquired lands. The rule in Shelly's case does not apply to wills made subsequent to October 1st, 1840, but it does apply to wills made before that date.[2] The will of a childless person is revoked by the subsequent birth of a child, though posthumous, except where the child is otherwise provided for, or the will shows an intention not to provide for it.[3] The birth of another child, or the return of a child supposed by the testator when he made his will to be dead, operates as a partial revocation by letting in those children to a share of the estate in the same manner as if the testator had died intestate.[4] The election of a widow to take against the will must be made within a year from the service of the citation issued by the judge of the probate court. But if a proceeding to contest the will be commenced within the year, the widow is entitled to make her election within three months after proceedings sustaining the will.[5]

SEC. 138. In Pennsylvania, wills are proved before the register of the county, and are recorded in his office. The probate is conclusive, unless contested within five years from the date of probate,

[1] [R. S. Ohio, sec. 5967.]
[2] [Id., sec. 5968.]
[3] [Id., sec. 5959.]
[4] [Id , sec. 5961.]
[5] [77 Ohio L. 307.]

by caveat and an action at law duly prosecuted.[1] Copies of wills proved in any other state or country, according to the laws thereof, may be offered for probate before the register.[2]

Every will must be in writing, and unless the person making it shall be prevented by the extremity of his last sickness, shall be signed by him at the end thereof, or by some person in his presence and by his express direction; and, in all cases, shall be proved by the oaths or affirmations of two or more competent witnesses.[3] A married woman can not make a will, except as to her separate estate.[4] A devise passes the whole estate without any words of perpetuity.[5]

Lands acquired after the date of the will pass by the will to the devisee under general words.[6] Marriage of a man, and the birth of a child not provided for in the will, though born after the death of the father, operate as a revocation *pro tanto* of a will made before marriage.[7]

[SEC. 139. In Tennessee, wills are probated in the court of the county where the testator had his usual residence at the time of his death, or, in case he had fixed places of residence in more than

[1] [Brightly's Purd., p. 407, secs. 12, 13.]
[2] [Id., p. 405, sec. 7.]
[3] [Id., p. 1474, sec. 6.]
[4] [Id., p. 1477, sec. 21.]
[5] [Id., p. 1475, sec. 10.]
[6] [Id., p. 1476, sec. 11.]
[7] [Id., p. 1477, sec. 18, note c.]

one county, in either of said counties.[1] They must be written in the testator's lifetime, and signed by him or by some other person in his presence, and by his direction, and subscribed in his presence by two witnesses at least, neither of whom is interested in the devise of the lands.

A paper writing, appearing to be the will of the deceased person, written by him, having his name subscribed or inserted in some part of it, and found after his death among his valuable papers or lodged in the hands of another for safe keeping, is sufficient to convey lands, if the handwriting is generally known by his acquaintances, and it is proved, by at least three credible witnesses, that they verily believe the handwriting, and every part of it, to be his.

Written wills with witnesses, when not contested, must be proved by at least one of the subscribing witnesses, if living; when contested, by all the living witnesses, if to be found, and by such other persons as may be produced to support it.[2]

A married woman may dispose of any estate secured to her separate use, or in the execution of a special power to that effect by will in writing, subscribed by her, or by some other person in her presence, and by her direction, and the subscription must be made, or the will acknowledged, in the presence of at least two witnesses subscribing

[1] [Laws 1871, sec. 2169.]

[2] [Id., secs. 2162, 2163, 2171, 2172.]

the will with their names, in the presence of the testatrix.[1]

Wills executed in other states or territories, or in the district of Columbia, must be proved according to the laws of the state, and certified in the manner prescribed by the act of Congress.[2]

The circuit court has exclusive jurisdiction to try and determine all issues made up to contest the validity of wills.[3]

The probate in common form may be contested, even after eighteen years.[4]

But it is settled, by numerous decisions, that the judgment of the circuit court is conclusive and final upon all persons interested, whether parties to the record or not.[5]

Children born after the making of a will, either before or after the death of the testator, not provided for by settlement made by testator in his lifetime, succeed to the same portion of the testator's estate as though he had died intestate.[6]

The rule in Shelly's case is abolished in this state.[7]]

[Sec. 140. In Wisconsin, every person of full age, and any unmarried woman of the age of

[1] [Laws 1871, secs. 2168, 2486*a* and *c*.]

[2] [Id., sec. 2182.]

[3] [Id., sec. 4227.]

[4] [Gibson *v.* Lane, 9 Yerg. 475.

[5] [Patton *v.* Allison, 7 Humph. 320; Roberts *v.* Stewart, 2 Swan, 162, 166; Fory *v.* Taylor, 1 Head. 594.]

[6] [Id., sec. 2193.]

[7] [Id., sec. 2008.]

eighteen, and upward, of sound mind and memory, may make a will.[1]

Wills must be in writing, signed by the testator or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses. If the witnesses are competent at the time of the execution of the will, their subsequent incompetency will not prevent the probate of the same.[2]

Wills are proved in the county court, or on appeal in the circuit or supreme court.[3]

Wills executed out of the state, when executed according to the laws of this state, or according to the laws of the state or country in which they are executed, may be admitted to probate in this state.[4]

When proved in the proper court of any other state or territory, a copy of such will and of the probate thereof, duly authenticated, may be recorded in the office of the register of deeds of any county in which any of the lands are situated.[5]

When any will is deposited with the county court, the court shall appoint a time and place of proving it, when all concerned may appear and contest the probate thereof, and cause notice of such time and place to be given by personal service on

[1] [R. S. Wis. 1878, secs. 2277.]
[2] [Id., sec. 2282.]
[3] [Id., sec. 2294.]
[4] [Id., sec. 2283.]
[5] [Id., sec. 2295.]

all persons interested, at least ten days before the time appointed, or by publication three successive weeks previous. If no person appears to contest the probate of the will at the time fixed for that purpose, the court may, in its discretion, grant probate thereof on the testimony of one of the subscribing witnesses only, if such witness shall testify that the will was executed in conformity with the statute, and that the testator was of sound mind at the time of the execution thereof. If none of the subscribing witnesses reside in this state at the time fixed for proving the will, the court may, in its discretion, admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will, and may admit proof of the handwriting of the testator, and of the subscribing witnesses.[1]

[1] [R. S. Wis. 1878, secs. 3787, 3788.]

CHAPTER IX.

LEASES.

141. Mode of execution of leases.—142. Who may make.—143. Agreement for a lease.—144. Liability of assignee.—145. Coal-oil leases, who may make.—146. Rights of adjoining owners.—147. Covenants for working.—148. Rights of landlord and tenant.

SECTION 141. The time for which verbal leases are binding, the nature of leases as incumbrances on estates in fee, and the law of the several states with respect to the recording of leases where deeds are required, have been considered. Allusion has incidentally been made to the effect of unqualified covenants to pay rent,[1] to make repairs,[2] and to leave the premises in tenantable condition. Where the lease is for a longer period than that which the law allows for verbal leases, it must, ordinarily, be by deed, and requires the same solemnities, as to signing, sealing, attestation by witnesses, release of dower, acknowledgment or proof, as are required in other cases of deeds. Very little, therefore, need be said upon this branch of the subject.

[SEC. 142. All persons who may hold real estate,

[1] Gates *v.* Green, 4 Paige, 355.

[2] Phillips *v.* Stevens, 16 Mass. 238; 102 English Common Law Rep. 483.

and who labor under no disability, may make leases. Tenants by curtesy, in dower or for life, may make leases, but only to the extent of their interests. Joint tenants, and tenants in common, may make leases jointly or severally. When joint tenants join in a lease, it is but one lease, as they have only one estate. Where tenants in common join in a lease, it is treated as several leases of their respective interests.[1]

In the latter case, where the entire rent is reserved, they may join in recovering it; where there is a separate reservation to each, they must sever. Tenants for years may make leases of a smaller estate than their own, unless restricted by the instrument under which they hold. Leases made by or to infants, are not void, but only voidable. They can not avoid a lease by deed until after majority. As they have no power to appoint agents or attorneys, the leases of infants must be by their own personal acts.

Ordinarily, married women must join with their husbands in making leases. Under the various statutes of many of the states, they may lease their separate property in the same manner as if *sole*. Leases made by persons *non compotes mentis*, are merely voidable; if, under guardianship, such leases are void. The statute generally confers upon the guardian, or committee of these persons, the power to make leases. As leases are part of the personal estate of a decedent, his executors or ad-

[1] [Co. Litt. 186*a*. Wood on Landlord and Tenant, sec. 90.]

ministrators have power to assign or make leases of the same.

A *cestui que trust* should join with the trustee in making a lease. But a trustee who holds the fee, may make a lease for a reasonable term, the question as to what is reasonable depending on the peculiar circumstances of each case.

A mortgagee can not make a lease as against the mortgagor until after foreclosure, nor can a mortgagor grant a lease subsequent to the mortgage, which will be good as against the mortgagee. In such a case, both should join in the lease.[1]

Where leases are made by an agent, care must be taken to see that he is properly authorized. And, if the instrument is required to be under seal, the authority of the agent to execute it must likewise be under seal. The agent should execute it in the name of his principal, as "A by B, his agent," or "attorney."]

[SEC. 143. Whether an instrument is a lease, or an agreement for a lease, is a question which the searcher will often have to decide in the examination of a title. This must depend upon the intention of the parties, to be gathered from the instrument taken as a whole. No particular form of words would seem to be necessary. A description of the premises, the amount of rent to be paid, and the duration of the term should be set

[1] [Wash. Real Prop., 4th Ed., pp. 455–461; Wood on Landlord and Tenant, sec. 129; Martindale on Conveyancing, secs. 307–319.]

out. But words of present demise must be used, or such as indicate that the parties intended the instrument to have that effect. Where there is certainty as to the amount of the rent, and the commencement and duration of the term, there is a presumption that a lease was intended to be made.[1] The fact that the parties have entered into possession, and nothing further appears to be done, is also evidence that the instrument was regarded as a lease. On the other hand, when the demise is conditional, or depending upon a contingency; where it is not to take effect until a future day, or where the terms are not fully agreed upon, or are to be embodied in another instrument before it is to take effect, or where it is expressly stipulated that it shall not have the effect of a lease, it will be construed as an agreement for a future lease.[2]]

SEC. 144. On the assignment of a leasehold estate, the attention of the searcher will be directed to those covenants in the lease which bind the assignee. The original tenant will always remain liable upon the express covenants contained in the lease, that being the necessary effect of his own agreement.[3] But his assignee, having made no personal engagement with the original landlord, is liable only on the covenants which run with the land, and upon them only during the time that he

[1] [Wood on Landlord and Tenant, sec. 184.]

[2] [Martindale on Conveyancing, sec. 304.]

[3] 2 Platt on Leases, 400; [1 Wash. R. P., p. 493].

is assignee.[1] He may rid himself of any future liability by assigning the whole of the unexpired term to any person who will accept it, a married woman, a person going abroad, a prisoner for debt, or a beggar.[2] He will still remain liable for rent accrued due, or breaches of covenant committed, during the period of his own occupation; but for nothing further.[3] The covenants which thus bind an unnamed assignee during the period of his occupation, are those relating to the payment of rent and taxes, the mode of cultivating, occupying, or trading on the premises, repairs, and the like. Those which bind the landlord in favor of the unnamed assignee of the tenant are, for the quiet enjoyment of the premises; for supplying them with water; for the renewal of the lease; for granting to the lessee timber for repairs and for necessary firewood; for payment of hay and straw left upon the premises at the expiration of the term; and for insuring the premises, if coupled with a provision for applying the insurance money to re-instating them in case of fire.[4] To constitute a party an assignee, it is necessary that he should take the identical term of the lessee, and the whole of the lessee's estate in the premises.[5] If the lessee reserves to himself a

[1] 2 Platt on Leases, 400; [1 Wash. R. P., p. 494].

[2] [Co. Litt. 215*a*; Spencer's Case; 1 Smith's L. C., pt. 1, 7th Am. ed., pp. 137–228.]

[3] Spencer's Case; 2 Platt on Leases, 400.

[4] [Spencer's Case, 1 Smith's L. C. 137–228;] 2 Platt on Leases, 402; Keppell *v.* Bailey, 2 Myl. & Kean, 537; [1 Wash. R. P., pp. 499, 500.]

[5] [1 Wash. R. P., p. 508.]

reversion, however trifling, even of a week or a day, the transaction will amount to an underlease, which will neither give the new tenant any right to enforce the covenants against the landlord, nor subject him to liability to perform the covenants in the original lease. All persons taking the estate of the lessee, either by the act of the parties or of law, are assignees.[1] That a mortgagee taking possession of a leasehold estate by virtue of his mortgage, will be liable to pay the rent and perform all the covenants which run with the land, has been already stated.[2]

SEC. 145. Leases for mining and for pumping coal oil have attracted so much attention that a few words may be devoted to that subject. Coal oil wells are governed by the same principles of law as mines, and, to some extent, on account of the fluid nature of the product, underground waters. The first inquiry of the searcher will be as to the right of the occupant to grant a license or lease. This involves an examination of his title; for no tenant for life can open a new mine or oil well, though he is allowed to work one already existing on the premises.[3] As the wife is dowable of mines,[4] her release of dower is necessary for the protection of the tenant. If no period is fixed in the lease, it commences, at common law, immediately, and con-

[1] [Taylor's Land. & Tenant, 7th ed., sec. 427.]

[2] [1 Wash. R. P., p. 523.]

[3] Crabb, sec. 100; 1 Platt on Leases, 21; [1 Wash. R. P. 144].

[4] Stoughton *v.* Leigh, 1 Taunton, 402; [1 Wash. R. P. 287].

tinues a lease for the life of the tenant. The modifications of this rule by statute in the several states have been mentioned in the chapter on deeds. In West Virginia, the words "doth demise unto the said N. B., his legal representatives and assigns," describing the property, are a sufficient statement of the formal words of conveyance in a lease.[1] Where the rights of a married woman are concerned, the certificate must show that she was examined privily and apart from her husband, and that the writing was shown and fully explained to her, and that she then acknowledged the writing to be her act, and declared that she had willingly executed the same, and did not wish to retract it. Unless the lease contains clear words giving to the grantee the exclusive right to work the land for minerals and oil, the grantor and his assigns may exercise the right in common with him.[2]

SEC. 146. In the *bona fide* exercise of the right of dominion over his own land, the owner may dig in any part of it, subject to the right of the adjacent owner to have the natural support of the soil as it existed in a state of nature.[3] A well may be sunk in any part of the land, though the effect may be to dry adjacent wells by cutting off their supplies, provided it is honestly done, in the exercise

[1] [R. S. West. Va. 1879, Ch. 64, sec. 4; Acts, 1882, p. 479.]

[2] Chetham *v.* Williamson, 4 East, 469; Crabb, sec. 100.

[3] Lasala *v.* Holbrook, 4 Paige, 169; Thurston *v.* Hancock, 12 Mass. 223; Humphries *v.* Brogden, 12 Queen's Bench, 739; Harris *v.* Ryding, 5 Meeson & Welsby, 60.

of a right, and not with a malicious design to injure the neighbors.[1]

Sec. 147. Great care is necessary in drawing the leases, or in advising upon the acceptance of an assignment of a lease, with respect to the covenants binding the lessee to work the mine or well. If the lessee has engaged to pay to the landlord a certain proportion of the value of the oil to be raised, "unless prevented by unavoidable accident from working the well," he is not excused at law by the circumstance that obstacles of an unexpected nature have happened to the well itself, so that the cost of raising the oil would be greater than its value when raised. Unavoidable accident means an accident physically unavoidable.[2] So, where the tenant was lessee of a coal mine, at the rent of £300 a year, and subject to a royalty of ten shillings for every wey of coal raised in each year above six hundred, that being the quantity considered to be paid for by the £300 a year, and the plaintiff was authorized to terminate the lease on the coal being worked out, and the plaintiff worked the mine for several years, till, when it was nearly exhausted, he was prevented by accidents and defects in it from continuing to work it, except at a ruinous expense; the court refused to restrain the defendant from suing for the £300 a year, although the plaintiff offered to pay him ten shillings per wey for all the

[1] Acton *v.* Blundell, 12 Meeson & Welsby, 324; [2 Wash. R. P., pp. 353–356].

[2] Morris *v.* Smith, 3 Douglass (English), 279.

remaining coal.[1] But where the tenant agreed to work a coal mine so long as it was "fairly workable," it was held that the mere existence of coal in the mine, of such a description that it would not pay to work it, did not oblige the tenant to continue working the mine at a dead loss.[2]

Sec. 148. Covenants respecting the payment of rent or royalty, and the mode of use of the mine or well, run with the land and bind the assignee. In those states where there is a law of distress, the landlord would have a right to distrain oil found on the premises to pay rent in arrear, in the same manner as any other product of the land. Where rent is reserved in kind, as is usual, a sale will not divest the landlord's right to follow his share into the hands of even innocent purchasers without notice; and a court of equity would restrain any disposition of the oil, if made or threatened, with a view to defeat the rights of the landlord. His right, where rent is paid in kind, is in the nature of an equitable lien.

[1] Phillips *v.* Jones, 9 Simons, 519.

[2] Jones *v.* Shears, 7 Carrington & Payne, 346.

INDEX.

[*The figures refer to the sections.*]

PUBLICATIONS

OF

ROBERT CLARKE & CO.,

CINCINNATI, O.

HISTORICAL AND MISCELLANEOUS.

ALZOG (John D. D.) A Manual of Universal Church History. Translated by Rev. T. J. Pabisch and Rev. T. S. Byrne. 3 vols. 8vo. 15 00

ANDERSON (E. L.) Six Weeks in Norway. 18mo. 1 00

ANDRE (Major). The Cow Chase; an Heroick Poem. 8vo. Paper. 75

ANTRIM (J.) The History of Champaign and Logan Counties, Ohio, from their First Settlement. 12mo. 1 50

BALLARD (Julia P.) Insect Lives; or, Born in Prison. Illustrated. Sq. 12mo. 1 00

BELL (Thomas J.) History of the Cincinnati Water Works. Plates. 8vo. 75

BENNER (S.) Prophecies of Future Ups and Downs in Prices: What Years to Make Money in Pig Iron, Hogs, Corn, and Provisions. 2d ed. 24mo. 1 00

BIBLE IN THE PUBLIC SCHOOLS. Records. Arguments, etc., in the Case of Minor *vs.* Board of Education or Cincinnati. 8vo. 2 00

Arguments in Favor of the Use of the Bible. Separate. Paper, 50

Arguments Against the Use of the Bible. Separate. Paper, 50

BIBLIOTHECA AMERICANA. 1883. Being a priced Catalogue of a large Collection (nearly 7,000 items) of Books and Pamphlets relating to America. 8vo. 312 pages. Paper, 50c.; Cloth, 1 00

BIDDLE (Horace P.) Elements of Knowledge. 12mo. 1 00

BIDDLE (Horace P.) Prose Miscellanies. 12mo. 1 00

BOUQUET (H.) The Expedition of, against the Ohio Indians in 1764, etc. With Preface by Francis Parkman, Jr. 8vo. $3.00. Large paper, 6 00

BOYLAND (G. H., M.D.) Six Months Under the Red Cross with the French Army in the Franco-Prussian War. 12mo. 1 50

BRUNNER (A. A.) Elementary and Pronouncing French Reader. 18mo. 60

BRUNNER (A. A.) The Gender of French Verbs Simplified. 18mo. 25

BURT (Rev. N. C., D.D.) The Far East; or Letters from Egypt, Palestine, etc. 12mo. 1 75

BUTTERFIELD (C. W.) The Washington-Crawford Letters; being

the Correspondence between George Washington and William Crawford, concerning Western Lands. 8vo. 1 00

BUTTERFIELD (C. W.) The Discovery of the Northwest in 1634, by John Nicolet, with a Sketch of his Life. 12mo. 1 00

CLARK (Col. George Rogers). Sketches of his Campaign in the Illinois in 1778–9. With an Introduction by Hon. Henry Pirtle, and an Appendix. 8vo. $2 00. Large paper, 4 00

COFFIN (Levi.) The Reminiscences of Levi Coffin, the Reputed President of the Underground Railroad. A Brief History of the Labors of a Lifetime in behalf of the Slave. With Stories of Fugitive Slaves, etc., etc. 12mo. 2 00

COLLIER (Peter). Sorghum: its Culture and Manufacture Economically Considered, and as a Source of Sugar, Syrup and Fodder. Illustrated. 12mo. In press.

CONSTITUTION OF THE UNITED STATES, ETC. The Declaration of Independence, July 4, 1776; the Articles of Confederation, July 9, 1778; the Constitution of the United States, September 17, 1787; the Fifteen Amendment to the Constitution, and Index; Washington's Farewell Address, September 7, 1796. 8vo. Paper. 25

CORNWELL (H. G.) Consultation Chart of the Eye-Symptoms and Eye-Complications of General Disease. 14 x 20 inches. Mounted on Roller. 50

CRAIG (N. B.) The Olden Time! A Monthly Publication, devoted to the Preservation of Documents of Early History, etc. Originally Published at Pittsburg, in 1846–47. 2 vols. 8vo. 10 00

DRAKE (D.) Pioneer Life in Kentucky. Edited, with Notes and a Biographical Sketch by his Son, Hon. Chas. D. Drake. 8vo. $3 00. Large paper. 6 00

DUBREUIL (A.) Vineyard Culture Improved and Cheapened. Edited by Dr. J. A. Warder. 12mo. 2 00

ELLARD (Virginia G.) Grandma's Christmas Day. Illus. Sq. 12mo. 1 00

EVERTS (Orpheus). What Shall We Do With the Drunkard? A Rational View of the Use of Brain Stimulants. 8vo. Paper. 50

FAMILY EXPENSE BOOK. A Printed Account Book, with Appropriate Columns and Headings, for keeping a Complete Record of Family Expenses. 12mo. 50

FINLEY (I. J.) and PUTNAM (R.) Pioneer Record and Reminiscences of the Early Settlers and Settlement of Ross County, Ohio. 8vo. 2 50

FLETCHER (Wm. B., M.D.) Cholera: its Characteristics, History, Treatment, etc. 8vo. Paper. 1 00

FORCE (M. F.) Essays: Pre-Historic Man—Darwinism and Deity—The Mound Builders. 8vo. Paper.

FORCE (M. F.) Some Early Notices of the Indians of Ohio. To What Race did the Mound Builders Belong? 8vo. Paper. 50

FREEMAN (Ellen). Manual of the French Verb, to accompany every French Course. 16mo. Paper. 25

GALLAGHER (Wm. D.) Miami Woods, A Golden Wedding, and other Poems. 12mo. 2 00

GRIMKE (F.) Considerations on the Nature and Tendency of Free Institutions. 8vo. 2 50

GRISWOLD (W.) Kansas: Her Resources and Developments; or, the Kansas Pilot. 8vo. Paper. 50

HALL (James). Legends of the West. Sketches illustrative of the Habits, Occupations, Privations, Adventures, and Sports of the Pioneers of the West. 12mo. 2 00

HALL (James). Romance of Western History; or, Sketches of History, Life, and Manners in the West. 12mo. 2 00

HANOVER (M. D.) A Practical Treatise on the Law of Horses, embracing the Law of Bargain, Sale, and Warranty of Horses and other Live Stock; the Rule as to Unsoundness and Vice, and the Responsibility of the Proprietors of Livery, Auction, and Sale Stables, Inn-keepers, Veterinary Surgeons, and Farriers, Carriers, etc. 8vo. 4 00

HART (J. M.) A Syllabus of Anglo-Saxon Literature. 8vo. Paper. 50

HASSAUREK (F.) The Secret of the Andes. A Romance. 12mo. 1 50

THE SAME, in German. 8vo. Paper, 50c.; cloth, 1 00

HASSAUREK (F.) Four Years Among Spanish Americans. Third Edition. 12mo. 1 50

HATCH (Col. W. S.) A Chapter in the History of the War of 1812, in the Northwest, embracing the Surrender of the Northwestern Army and Fort, at Detroit, August 16, 1813, etc. 18mo. 1 25

HAYES (Rutherford B.) The Life, Public Services, and Select Speeches of. Edited by J. Q. Howard. 12mo. Paper, 75c.; Cloth. 1 25

HAZEN (Gen. W. B.) Our Barren Lands. The Interior of the United States, West of the One-Hundredth Meridian, and East of the Sierra Nevada. 8vo. Paper. 50

HENSHALL (Dr. James A.) Book of the Black Bass; comprising its complete Scientific and Life History, together with a Practical Treatise on Angling and Fly Fishing, and a full description of Tools, Tackle, and Implements. Illustrated. 12mo. 3 00

HORTON (S. Dana). Silver and Gold, and their Relation to the Problem of Resumption. 8vo. 1 50

HORTON (S. Dana). The Monetary Situation. 8vo. Paper. 50

HOUGH (Franklin B.) Elements of Forestry. Designed to afford Information concerning the Planting and Care of Forest Trees for Ornament and Profit; and giving Suggestions upon the Creation and Care of Woodlands, with the view of securing the greatest benefit for the longest time. Particularly adapted to the wants and conditions of the United States. Illustrated. 12mo. 2 00

HOUSEKEEPING IN THE BLUE GRASS. A New and Practical Cook Book. By Ladies of the Presbyterian Church, Paris, Ky. 12mo. 13th thousand. 1 50

HOVEY (Horace C.) Celebrated American Caverns, especially

Mammoth, Wyandot, and Luray; together with Historical, Scientific, and Descriptive Notices of Caves and Grottoes in Other Lands. Maps and Illustrations. 8vo. 2 00

HOWE (H.) Historical Collections of Ohio. Containing a Collection of the most Interesting Facts, Traditions, Biographical Sketches, Anecdotes, etc., relating to its Local and General History. 8vo. 6 00

HUNT (W. E.) Historical Collections of Coshocton County, Ohio. 8vo. 3 00

HUSTON (R. G.) Journey in Honduras, and Jottings by the Way. Inter-Oceanic Railway. 8vo. Paper. 50

JACKSON (John D., M.D.) The Black Arts in Medicine, with an Anniversary Address. Edited by Dr. L. S. McMurtry. 12mo. 1 00

JASPER (T.) The Birds of North America. Colored Plates, drawn from Nature, with Descriptive and Scientific Letterpress. In 40 parts, $1.00 each; or, 2 vols. Royal 4to. Half-morocco, $50 00; full morocco, 60 00

The Same. Popular portion only with the Colored Plates. 1 vol. Half morocco, $36.50; full morocco, 40 00

JORDAN (D. M.) Rosemary Leaves. A Collection of Poems. 18mo. 1 50

KELLER (M. J.) Elementary Perspective, explained and applied to Familiar Objects. Illustrated. 12mo. 1 00

KING (John). A Commentary on the Law and True Construction of the Federal Constitution. 8vo. 2 50

KLIPPART (J. H.) The Principles and Practice of Land Drainage. Illustrated. 12mo. 1 75

LAW (J.) Colonial History of Vincennes, Indiana, under the French, British, and American Governments. 12mo. 1 00

LLOYD (J. U.) The Chemistry of Medicines. Illus. 12mo. Cloth, $2 75; Sheep, 3 25

LLOYD (J. U.) Pharmaceutical Preparations; Elixirs, their History, Formulæ, and Methods of Preparation. 12mo. 1 25

LONGLEY (Elias). Eclectic Manual of Phonography. A Complete Guide to the Acquisition of Pitman's Phonetic Shorthand, with or without a Master. A new and carefully revised edition. 12mo. Stiff paper binding, 65c.; Cloth, 75

LONGLEY (Elias). The Reporter's Guide. Designed for Students in any Style of Phonography; in which are formulated for the first time in any work of the kind Rules for the Contraction of Words, Principles of Phrasing, and Methods of Abbreviation. Abundantly illustrated. 12mo. 2 00

LONGLEY (Elias). American Phonographic Dictionary, exhibiting the correct and actual Shorthand Forms for all the useful Words in the English Language, about 50,000 in number, and, in addition, many Foreign Terms; also, for 2,000 Geographical Names, and as many Family, Personal, and Noted Fictitious Names. 12mo. 2 50

LONGLEY (Elias). Every Reporter's Own Shorthand Dictionary. The same as the above, but printed on writing paper, leaving out the Shorthand Forms and giving blank lines opposite each word, for the purpose of enabling writers of any System

of Shorthand to put upon record, for convenient reference, the peculiar word-forms they employ. 12mo. 2 50

LONGLEY (Elias). Compend of Phonography, presenting a Table of all Alphabetical Combinations, Hooks, Circles, Loops, etc., at one view; also, Complete Lists of Word-signs and Contracted Word-forms, with Rules for Contracting Words for the Use of Writers of all Styles of Phonography. 12mo. Paper. 25

LONGLEY (Elias). The Phonetic Reader and Writer, containing Reading Exercises, with Translations on opposite pages, which form Writing Exercises. 12mo. 25

LONGLEY (Elias). Phonographic Chart. 28 x 42 inches. 50

MCBRIDE (J.) Pioneer Biography; Sketches of the Lives of some of the Early Settlers of Butler County, Ohio. 2 vols. 8vo. $6 50. Large paper. Imp. 8vo. 13 00

MCLAUGHLIN (M. Louise). China Painting. A Practical Manual for the Use of Amateurs in the Decoration of Hard Porcelain. Sq. 12mo. Boards. 75

MCLAUGHLIN (M. Louise). Pottery Decoration: being a Practical Manual of Underglaze Painting, including Complete Detail of the author's Mode of Painting Enameled Faience. Sq. 12mo. Boards. 1 00

MACLEAN (J. P.) The Mound Builders, and an Investigation into the Archæology of Butler County, Ohio. Illus. 12mo. 1 50

MACLEAN (J. P.) A Manual of the Antiquity of Man. Illustrated. 12mo. 1 00

MACLEAN (J. P.) Mastodon, Mammoth, and Man. Illustrated. 12mo. 60

MACLEAN (J. P.) The Worship of the Reciprocal Principles of Nature among the Ancient Hebrews. 18mo. Paper. 25

MANSFIELD (E. D.) Personal Memories, Social, Political, and Literary 1803–43. 12mo. 2 00

MANYPENNY (G. W.) Our Indian Wards. A History and Discussion of the Indian Question. 8vo. 3 00

MAY (Col. J.) Journal and Letters of, relative to Two Journeys to the Ohio Country, 1788 and 1779. 8vo. 2 00

METTENHEIMER (H. J.) Safety Book-keeping. Being a Complete Exposition of Book-keeper's Frauds—how Committed, how discovered, how prevented; with other Suggestions of Value to Merchants and Book-keepers in the Management of Accounts. 18mo. Cloth. 1 00

MINOR (T. C., M.D.) Child-bed Fever. Erysipelas and Puerperal Fever, with a Short Account of both Diseases. 8vo. 2 00

MINOR (T. C., M.D.) Scarlatina Statistics of the United States. 8vo. Paper. 50

MORGAN (Appleton). The Shakespearean Myth; or, William Shakespeare and Circumstantial Evidence. 12mo. 2 00

MORGAN (Appleton). Some Shakespearean Commentators. 12mo. Paper. 75

NAME AND ADDRESS BOOK. A Blank Book, with Printed Headings and Alphabetical Marginal Index, for Recording the Names and Addresses of Professional, Commercial, and Family Correspondents. 8vo. 1 00

NASH (Simeon). Crime and the Family. 12mo. 1 25

NERINCKX (Rev. Charles). Life of, with Early Catholic Missions in Kentucky; the Society of Jesus; the Sisterhood of Loretto, etc. By Rev. C. P. Maes. 8vo. 2 50

NICHOLS (G. W.) The Cincinnati Organ; with a Brief Description of the Cincinnati Music Hall. 12mo. Paper. 25

OHIO VALLEY HISTORICAL MISCELLANIES. I. Memorandums of a Tour made by Josiah Espy, in the States of Ohio, and Kentucky, and Indian Territory, in 1805. II. Two Western Campaigns in the War of 1812-13: 1. Expedition of Capt. H. Brush, with Supplies for General Hull. 2. Expedition of Gov. Meigs, for the relief of Fort Meigs. By Samuel Williams. III. The Leatherwood God: an account of the Appearance and Pretentions of J. C. Dylks in Eastern Ohio, in 1828. By R. H. Taneyhill. 1 vol. 8vo. $2 50. Large paper, 5 00

ONCE A YEAR; or, The Doctor's Puzzle. By E. B. S. 16mo. 1 00

OSBORN (H. S.) Ancient Egypt in the Light of Modern Discoveries. Illustrated. 12mo. 1 25

PHISTERER (Captain Frederick). The National Guardsman: on Guard and Kindred Duties. 24mo. Leather. 75

PHYSICIAN'S POCKET CASE RECORD PRESCRIPTION BOOK. 35

PHYSICIAN'S GENERAL LEDGER. Half Russia. 4 00

PIATT (John J.) Penciled Fly-Leaves. A Book of Essays in Town and Country. Sq. 16mo. 1 00

POOLE (W. F.) Anti-Slavery Opinions before 1800. An Essay. 8vo. Paper, 75c.; Cloth, 1 25

PRENTICE (Geo. D.) Poems of, collected and edited, with Biographical Sketch, by John J. Piatt. 12mo. 2 00

QUICK (R. H.) Essays on Educational Reformers. Schools of the Jesuits: Ascham, Montaigne, Ratich, Milton; Comenius; Locke; Rousseau's Emile; Basidow and the Philanthropin, etc. 12mo. 1 50

RANCK (G. W.) History of Lexington, Kentucky. Its Early Annals and Recent Progress, etc. 8vo. 4 00

REEMELIN (C.) The Wine-Maker's Manual. A Plain, Practical Guide to all the Operations for the Manufacture of Still and Sparkling Wines. 12mo. 1 25

REEMELIN (C.) A Treatise on Politics as a Science. 8vo. 1 50

REEMELIN (C.) A Critical Review of American Politics. 8vo. 3 50

REEMELIN (C.) Historical Sketch of Green Township, Hamilton County, Ohio. 8vo. Paper. 1 25

RIVES (E. M. D.) A Chart of the Physiological Arrangement of Cranial Nerves. Printed in large type, on a sheet 28 x 15 inches. Folded, in cloth case. 50

ROBERT (Karl). Charcoal Drawing without a Master. A Complete Treatise in Landscape Drawing in Charcoal, with Lessons and Studies after Allonge. Translated by E. H. Appleton. Illustrated. 8vo. 1 00

ROY (George). Generalship; or, How I Managed my Husband. A tale. 18mo. Paper, 50c.; Cloth. 1 00

ROY (George). The Art of Pleasing. A Lecture. 12mo. Paper. 25

ROY (George). The Old, Old Story. A Lecture. 12mo. Paper. 25

RUSSELL (A. P.) Thomas Corwin. A Sketch. 16mo. 1 00

RUSSELL (Wm.) Scientific Horseshoeing for the Different Diseases of the Feet. Illustrated. 8vo. 1 00

SATTLER (Eric E.) The History of Tuberculosis from the time of Sylvius to the Present Day. Translated, in part, with additions, from the German of Dr. Arnold Spina, First Assistant in the Laboratory of Professor Stricker, of Vienna: including also Dr. Robert Koch's Experiments, and the more recent Investigations of Dr. Spina on the Subject. 12mo. 1 25

SAYLER (J. A.) American Form Book. A Collection of Legal and Business Forms, embracing Deeds, Mortgages, Leases, Bonds, Wills, Contracts, Bills of Exchange, Promissory Notes, Checks, Bills of Sale, Receipts, and other Legal Instruments, prepared in accordance with the Laws of the several States; with Instructions for drawing and executing the same. For Professional and Business Men. 8vo. 2 00

SHEETS (Mary R.) My Three Angels: Faith, Hope, and Love. With full-page illustration. By E. D. Grafton. 4to. Cloth. Gilt. 5 00

SKINNER (J. R.) The Source of Measures. A Key to the Hebrew-Egyptian Mystery in the Source of Measures, etc. 8vo. 5 00

SMITH (Col. James). A Reprint of an Account of the Remarkable Occurrences in his Life and Travels, during his Captivity with the Indians in the years 1755, '56, '57, '58, and '59, etc. 8vo. $2 50. Large paper. 5 00

STANTON (H.) Jacob Brown and other Poems. 12mo. 1 50

ST. CLAIR PAPERS. A Collection of the Correspondence and other papers of General Arthur St. Clair, Governor of the Northwest Territory. Edited, with a Sketch of his Life and Public Services, by William Henry Smith. 2 vols. 8vo. 6 00

STRAUCH (A.) Spring Grove Cemetery, Cincinnati: its History and Improvements, with Observations on Ancient and Modern Places of Sepulture. The text beautifully printed with ornamental colored borders, and photographic illustrations. 4to. Cloth. Gilt. 15 00

An 8vo. edition, without border and illustrations. 2 00

STUDER (J. H.) Columbus, Ohio: its History, Resources, and Progress, from its Settlement to the Present Time. 12mo. 2 00

TANEYHILL (R. H.) The Leatherwood God: an account of the Appearance and Pretensions of Joseph C. Dylks in Eastern Ohio, in 1826. 12mo. Paper. 30

TEN BROOK (A.) American State Universities. Their Origin and Progress. A History of the Congressional University Land Grants. A particular account of the Rise and Development of the University of Michigan, and Hints toward the future of the American University System. 8vo. 2 00

TILDEN (Louise W.) Karl and Gretchen's Christmas. Illustrated. Square 12mo. 75

TILDEN (Louise W.) Poem, Hymn, and Mission Band Exercises. Written and arranged for the use of Foreign Missionary Societies and Mission Bands. Square 12mo. Paper. 25

TRENT (Capt. Wm.) Journal of, from Logstown to Pickawillany, in 1752. Edited by A. T. Goodman. 8vo. 2 50

TRIPLER (C. S., M. D.) and BLACKMAN (G. C., M. D.) Handbook for the Military Surgeon. 12mo. 1 00

TYLER DAVIDSON FOUNTAIN. History and Description of the Tyler Davidson Fountain, Donated to the City of Cincinnati, by Henry Probasco. 18mo. Paper. 25

VAGO (A. L.) Instructions in the Art of Modeling in Clay. With an Appendix on Modeling in Foliage, etc., for Pottery and Architectural Decorations, by Benn Pitman, of Cincinnati School of Design. Illustrated. Square 12mo. 1 00

VAN HORNE (T. B.) The History of the Army of the Cumberland; its Organization, Campaigns, and Battles. *Library Edition.* 2 vols. With Atlas of 22 maps, compiled by Edward Ruger. 8vo. Cloth, $8 00; Sheep, $10 00; Half Morocco, $12 00. *Popular Edition.* Containing the same Text as the Library Edition, but only one map. 2 vols. 8vo. Cloth. 5 00

VENABLE (W. H.) June on the Miami, and other Poems. Second edition, 18mo. 1 50

VOORHEES (D. W.) Speeches of, embracing his most prominent Forensic, Political, Occasional, and Literary Addresses. Compiled by his son, C. S. Voorhees, with a Biographical Sketch and Portrait. 8vo. 5 00

WALKER (C. M.) History of Athens County, Ohio, and incidentally of the Ohio Land Company, and the First Settlement of the State at Marietta, etc. 8vo. $6 00. Large Paper. 2 vols. $12 00. Popular Edition. 4 00

WALTON (G. E.) Hygiene and Education of Infants; or, How to take care of Babies. 24mo. Paper. 25

WARD (Durbin). American Coinage and Currency. An Essay read before the Social Science Congress, at Cincinnati, May 22, 1878. 8vo. Paper. 10

WEBB (F.) and JOHNSTON (M. C.) An Improved Tally-Book for the use of Lumber Dealers. 18mo. 50

WHITTAKER (J. T., M. D.) Physiology; Preliminary Lectures. Illustrated. 12mo 1 75

WILLIAMS (A. D., M. D.) Diseases of the Ear, including Necessary Anatomy of the Organ. 8vo. 3 50

YOUNG (A.) History of Wayne County, Indiana, from its First Settlement to the Present Time. 8vo. 2 00

LAW TREATISES AND REPORTS.

ADKINSON (F.) Township and Town Officer's Guide for the State of Indiana. 12mo. Net. Cloth, $2 00; Sheep. 2 50

BARTON (C.) History of a Suit in Equity. Revised and enlarged. 8vo. 2 50

BATES (C.) Ohio Pleadings, Parties, and Forms under the Code 2 vols. 8vo. Net. 12 00

BIBLE IN THE PUBLIC SCHOOLS. Arguments in favor and against, with Decision of the Cincinnati Superior Court. 8vo. Cloth. 2 00

BIBLE IN THE PUBLIC SCHOOLS. The arguments in favor of, and against. Separate. Paper. Each, 50

BLOOM (S. S.) Popular Edition of the Laws of Ohio, in Force June, 1882. Net. Cloth, $3 00; Sheep, 4 00

BOND (L. H.) Reports of Cases Decided in the Circuit and District Courts of the United States for the Southern District of Ohio. 2 vols. 8vo. 14 00

BURNS (H.) An Index or Abbreviated Digest of the Supreme Court Reports of the State of Indiana, from 1st Blackford to 77th Indiana, inclusive. 8vo. Net. 5 00

CARLTON (A. B.) The Law of Homicide; together with the Celebrated Trial of Judge E. C. Wilkinson, Dr. B. R. Wilkinson, and J. Murdaugh, for the Murder of John Rothwell and A. H. Meeks, including the Indictments, the Evidence, and Speeches of Hon. S. S. Prentiss, Hon. Ben. Hardin, E. J. Bullock, Judge John Rowan, Col. Geo. Robertson, and John B. Thompson, of Counsel, in full. 8vo. Net. 2 50

CINCINNATI SUPERIOR COURT REPORTER. 2 vols. 8vo. Net. 10 00
See also Handy, Disney.

CONSTITUTION OF THE UNITED STATES, with the Fifteen Amendments, Declaration of Independence, etc. 8vo. Paper. 25

COX (R.) American Trade Mark Cases. A Compilation of all reported Trade Mark cases decided in the United States Courts prior to 1871. 8vo. 8 00

CURWEN (M. E.) Manual of Abstracts of Title to Real Property. 12mo. Cloth, $1 50; Sheep, 1 75

DAVIS (E. A.) New Digest of the Decisions of the Supreme Court of Indiana, to 1875. 2 vols. 8vo. Net. 12 00

DISNEY'S REPORTS. Cincinnati Superior Court. 2 vols. 8vo. Net. 10 00

FISHER (S. S.) Reports of Patent Cases decided in the Circuit Courts of the United States, 1843–1873. 6 vols. 8vo. Vols. 3 to 6, each. Net. 25 00

FISHER (W. H.) Reports of Patent Cases decided in the Courts of the United States, 1827–1851. 10 00

FISHER (R. A.) Digest of English Patent, Trade Mark, and Copyright Cases. Edited by Henry Hooper. 8vo. 4 00

FORTESCUE (Sir John). De Laudibus Legum Angliæ. A Treatise in Commendation of the Laws of England. 8vo. Cloth. 3 00

GIAUQUE (F.) The Election Laws of the United States. Being a Compilation of all the Constitutional Provisions and Laws of the United States relating to Elections, the Elective Franchise, to Citizenship, and to the Naturalization of Aliens. With Notes of Decisions affecting the same. 8vo. Paper. 75c.; Cloth. 1 00

GIAUQUE (F.) Ohio Election Laws. 8vo. Paper, $1.00; Cloth, 1 50

GIAUQUE (F.) Manual for Road Supervisors in Ohio. 16mo. Boards. 25

GIAUQUE (F.) Manual for Assignees and Insolvent Debtors in Ohio. Net. Cloth, $2 00; Sheep, 2 50

GIAUQUE (F.) Manual for Guardians in Ohio. Net. Cloth, $2 00; Sheep, 2 50

GIAUQUE (F.) A complete Manual of the Road Laws of Ohio in force 1883, with Forms and Notes of Decisions. *In press.*

GIAUQUE (F.) and MCCLURE (H. B.) Dower and Curtesy Tables, for ascertaining, on the basis of the Carlisle Tables of Mortality, the present value of vested and contingent rights of Dower and Curtesy, and of other Life Estates. 8vo. Net. 5 00

HANDY'S REPORTS. Cincinnati Superior Court. 2 vols. in 1. 8vo. Net. 5 00

HANOVER (M. D.) A Practical Treatise on the Law relating to Horses. Second edition. 8vo. 4 00

HARRIS (S. F.) Principles of the Criminal Law. Edited by Hon. M. F. Force. 8vo. Net. 4 00

INDIANA LAWS. Being Acts and Joint Resolutions of the General Assembly of the State of Indiana, passed at the Regular Session, which was begun and held at Indianapolis, on Thursday, the fourth day of January, 1883, and adjourned without day on Monday, the fifth day of March, 1883. Edited, printed, published, and circulated under authority of law, and with the Secretary of State's authentication. S. R. Downey, Editor. 8vo. 1 00

KENTUCKY REPORTS. Reports of cases decided in the Court of Appeals of Kentucky. 1785–1878. 76 vols. in 61.

KING (J.) A Commentary on the Law and True Construction of the Federal Constition. 8vo. 2 50

MCDONALD (D.) Treatise on the Law relating to the Powers and Duties of Justices and Constables in Indiana. Edited by L. O. Schroeder. 8vo. *In press.*

MATTHEWS (Stanley). A Summary of the Law of Partnership. For use of Business Men. 12mo. Cloth, $1 25; Sheep, 1 50

MCLEAN (J.) Reports of Cases decided in the Circuit Court of the United States for the Seventh District. 1829–1555. 6 vols. 8vo. Vols. 2, 4, 5, 6. Each, 6 50

MONTESQUIEU (Baron De). The Spirit of Laws. Translated from the French by Thomas Nugent. New edition, with Memoir. 2 vols. 8vo. Cloth. 6 00

MORGAN (J. A.) An English Version of Legal Maxims, with the Original Forms. Alphabetically arranged, and an Index of Subjects. Second edition. 12mo. Cloth. Net. 2 00

NASH (S.) Pleading and Practice under the Codes of Ohio, New York, Kansas, and Nebraska. Fourth edition, 2 vols. 8vo. Net. 10 00

OHIO AND OHIO STATE REPORTS. Reports of Cases decided in the Supreme Court of Ohio. 1821–1880. 55 vols. Net. 137 50

OHIO STATUTES. Embracing:

Curwen's Statutes at Large, 1833–1860. 4 vols. 8vo. Net. 20 00

Swan & Critchfield's Revised Statutes, 1860. 2 vols. 8vo. Net. 5 00

Sayler's Statutes at Large, 1860–1875. 4 vols. 8vo. 20 00

PECK (H. D.) The Law of Municipal Corporations in the State of Ohio. Second edition. 8vo. 5 00

PECK (H. D.) The Township-Officer's Guide of Ohio. Second edition. Net. Cloth, $2 00; Sheep, 2 50

POLLOCK (F.) Principles of Contract at Law and in Equity. Edited by G. H. Wald. 8vo. Net. 6 00

RAFF (G. W.) Guide to Executors and Administrators in the State of Ohio. Sixth edition. Edited and enlarged by F. Giauque. 12mo. Cloth, $2 00; Sheep, 2 50

RAFF (G. W.) Manual of Pensions, Bounty, and Pay. 1789–1863. 12mo. 2 00

RAFF (G. W.) War Claimant's Guide. Laws relating to Pensions, Bounty, etc. War of 1861–1865. 8vo. 4 00

REINHARD (G. L.) The Criminal Law of the State of Indiana, with Precedents, Forms for Writs, Docket Entries, etc. 8vo. 2 50

SAINT GERMAIN (C.) The Doctor and Student; or, Dialogues between a Doctor of Divinity and a Student in the Laws of England, containing the grounds of those Laws. Revised and corrected. 8vo. Cloth. 3 00

SAUNDERS (T. W.) A Treatise upon the Law of Negligence. With notes of American Cases. 8vo. 2 50

SAYLER (J. R.) American Form Book; a Collection of Legal and Business Forms for Professional and Business Men. 8vo. Cloth. Net. 2 00

STANTON (R. H.) A New Digest of the Kentucky Decisions; embracing all Cases decided by the Appellate Courts, from 1785 to 1877. Second edition. 2 vols. 8vo. Net. 6 00

STANTON (R. H.) A Practical Treatise on the Law relating to Justices of the Peace, etc., in Kentucky. Third edition. 8vo. 7 50

STANTON (R. H.) Manual for the Use of Executors, Administrators, Guardians, etc., in Kentucky. Second edition. 12mo. 1 75

SWAN (J. R.) Pleadings and Precedents, under the Code of Ohio. 8vo. 6 00

SWAN (J. R.) Treatise on the Law relating to the Powers and Duties of Justices of the Peace, etc., in the State of Ohio. Eleventh edition. 8vo. Net. 6 00

SWAN (J. R.) and PLUMB (P. B.) Treatise on the Law relating to the Powers and Duties of Justices, etc., in Kansas. 8vo. 5 00

WALKER (J. B.) and BATES (C.) A new Digest of Ohio Decisions. Second edition. 2 vols. 8vo. Net. 12 00
Vol. 3, 1874–1882. By C. Bates. Net. 5 00

WARREN (M.) Criminal Law and Forms. Third edition. 8vo. 5 00

WELLS (J. C.) Treatise on the Separate Property of Married Women, under the recent Enabling Acts. Second edition. 8vo. 6 00

WELLS (J. C.) A Manual of the Laws relating to County Commissioners in the State of Ohio, with carefully prepared Forms, and References to the Decisions of the Supreme Court. *In press.*

WILD (E. N.) Journal Entries under the Codes of Civil and Criminal Procedure. With Notes of Decisions. Second edition. 8vo. 4 00

WILCOX (J. A.) The General Railroad Laws of the State of Ohio, in force January, 1874. 8vo. 5 00

WILSON (M. F.) The New Criminal Code of Ohio, with Forms and Precedents, Digest of Decisions, etc. Second edition. 8vo. Net. 5 00

WORKS (John D.) Indiana Practice, Pleadings, and Forms. 2 vols. 8vo. Net. 12 00

NASH (Simeon). Lawyer's Case Docket, containing printed Headings, and blank spaces for names of Parties, Memoranda of all the Proceedings, with full printed Instructions, and an Index. Crown size. Half roan, $3.75; Full Sheep. 4 50

LAWYER'S COLLECTION DOCKET. With convenient Ruling, printed Headings, Index, etc. 4to. Half Russia. 3 50

ATTORNEY'S POCKET DOCKET. Ruled and Printed for number of Case, Parties, and kind of Action, Witnesses, etc., with room for 150 cases. Pocket size. Morocco. 1 00

CHANGEABLE POCKET DOCKET. The Docket paper is furnished separately, and so arranged that it may be subsequently bound in one volume. Paper, 50c. per quire. Morocco case, with pocket and band. 2 00

NOTARY'S OFFICIAL REGISTER. Being a Record of Protests and other Official Transactions. 4to. 2 quires. Half sheep, $2 00; 3 quires, half russia. 3 00

COLLECTION RECEIPT BOOK. The Book of Collection Receipts, which is bound in the form of a check book, contains the stub in which is preserved a record of the transaction, and a printed receipt, giving parties, date, interest, indorsers, credits, etc., which is torn off and sent to your correspondent. Book of 50 receipts, 40c.; 100 receipts, 75c.; 200 (two to a page). 1 25

A Catalogue of Legal Blanks will be sent on application.

LAWYER'S OFFICE DOCKET.

The Lawyer's Office Docket. Embracing the History of each Case, and the Proceedings thereon, together with a Digest of the Principles of Law involved, and References to Authorities. With Index and Memoranda. Quarto. 212 pages. Half russia. Cloth sides. Net. 3 50

THE UNITED STATES COMMISSIONER'S DOCKET.

Docket for Commissioners of the United States Circuit Courts, embracing a Full Record of the Proceeding in each Case, with Schedule of Costs, and an Index of Cases. Quarto. Half russia. Net. 3 75